TRADE IN SERVICES

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

AND THE

SUBCOMMITTEE ON

TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2051 and S. 2058

MAY 14, 1982

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TRADE IN SERVICES

FRIDAY, MAY 14, 1982

U.S. SENATE, COMMITTEE ON FINANCE, JOINT MEETING OF THE SUBCOMMITTEE ON INTERNATIONAL TRADE AND THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
Washington, D.C.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2221, Dirksen Senate Office Building, Hon. William V. Roth, Jr., presiding.

Present: Senators Roth, Chafee, and Moynihan.

[The committee press release, the bills S. 2051, S. 2058 the description of these bills by the Joint Committee on Taxation, and the prepared statement of Senator Moynihan and Hon. David Glickman, Deputy Assistant Secretary of the Treasury follow:]

[Press Release No. 82-127]

PRESS RELEASE OF THE U.S. SENATE, COMMITTEE ON FINANCE, SUBCOMMITTEE ON INTERNATIONAL TRADE AND SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

(For Immediate Release, April 22, 1982)

FINANCE SUBCOMMITTEES SET HEARING ON S. 2058 AND S. 2051, TWO BILLS RELATING TO TRADE IN SERVICES

Senator John C. Danforth (R., Mo.), Chairman of the Subcommittee on International Trade, and Senator Bob Packwood, (R., Oreg.), Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the Subcommittees will hold a hearing on S. 2058 and S. 2051, two bills relating to trade in services, on Friday, May 14, 1982.

The hearing will begin at 10:00 a.m. in Room 2221 of the Dirksen Senate Office Building.

Further background.—S. 2058, introduced by Senators Roth, Chafee, and Inouye, seeks to establish as a trade negotiating objective of the United States the reduction or elimination of barriers to trade in services. Further, it seeks to improve and to coordinate better consideration of service sector issues within the Federal Government. Finally, it seeks "to provide for consideration of the access accorded to United States service sector industries in foreign markets in fashioning United States policies affecting access to the United States market of foreign funds and suppliers." and "to clarify the application of provisions of United States laws to trade in se ices."

S. 2051, introduced by Senators Danforth, Moynihan, Bentsen, Wallop, Mitchell, Heinz, Symms, Cohen, Gorton, and Jackson, would deny the deduction of any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States, if the foreign undertaking is located in a country which denies a similar deduction for the cost of advertising in the United States directed to that country. This "mirror" legislation was recommended by the Administration as a response to Canadian legislation that denied such deductions to broadcasters advertising on U.S. stations broadcasting into Canada. The recommendation followed a Presidential determination under section 301 of the Trade Act of 1974 that the Canadian law is an unreasonable practice that burdens U.S. commerce.

97th CONGRESS
2d Session

S. 2051

To amend the Internal Revenue Code of 1954 to deny the deduction for amounts paid or incurred for certain advertisements carried by certain foreign broadcast undertakings.

IN THE SENATE OF THE UNITED STATES

February 2 (legislative day, January 25), 1982

Mr. Danforth (for himself, Mr. Moynihan, Mr. Bentsen, Mr. Wallop, Mr. Mitchell, Mr. Heinz, Mr. Symms, Mr. Cohen, Mr. Gorton, and Mr. Jackson) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to deny the deduction for amounts paid or incurred for certain advertisements carried by certain foreign broadcast undertakings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by redesignating subsection (i) as subsection (k) and by inserting before such subsection the following new subsection:

"(j) Certain Foreign Advertising Expenses.—

"(1) In general.—No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in that foreign country when placed with a United States broadcast undertaking.

"(2) Broadcast undertaking.—For purposes of paragraph (1), the term 'broadcast undertaking' includes (but is not limited to) radio and television stations."

(b) The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

II

97TH CONGRESS
2D SESSION

S. 2058

To promote foreign trade in services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1982

Mr. ROTH (for himself, Mr. CHAFEE, and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To promote foreign trade in services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade in Services Act of 1982".

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the United States economy is predominantly a service economy as approximately 70 percent of the United States labor force is employed in producing services and approximately 67 percent of the gross national product is generated by services;

(2) many service industries require highly skilled and trained workers and employ advanced technology which enhances the international competitiveness of the United States economy;

(3) productivity in the service sector increased by 20 percent from 1967 to 1979 and as such increase is far more than the productivity gains registered in the goods producing sector, such increase helped restrain inflation;

(4) in 1980, according to official United States balance-of-payments statistics, the United States earned a surplus of more than $36,000,000,000 in the services account in contrast to the merchandise trade deficit of $25,000,000,000 (c.i.f.);

(5) the United States is the world's largest trader of international services, accounting for approximately 20 percent of such international trade in 1980, but this share represents a decline from recent years;

(6) barriers to, and other distortions of, international trade in services, including barriers to the establishment and operation of United States companies in foreign markets, have had a serious and negative impact on the growth of United States service sector exports;

(7) such barriers are likely to increase unless the United States and its trading partners take prompt action to negotiate their reduction or elimination and to develop effective international rules governing trade in services; and

(8) trade in services is an important issue for international negotiations and deserves priority in the attention of governments, international agencies, negotiators, and the private sector.

(b) PURPOSES.—The purposes of this Act are—

(1) to encourage the expansion of international trade in services through the negotiation of agreements, both bilateral and multilateral, that reduce or eliminate barriers to, and other distortions of, international trade in services (including barriers to the right of establishment and operation of service enterprises in foreign markets) and that strengthen the international rules governing trade in services;

(2) to fully integrate service sector trade issues into overall United States economic and trade policy;

(3) to provide for effective coordination of services sector trade policy within the Federal Government;

(4) to encourage consultation and cooperation among United States Government agencies, between the United States and State and local governments,

and between the United States Government and the private sector;

(5) to provide for consideration of the access accorded to United States service sector industries in foreign markets in fashioning United States policies affecting access to the United States market of foreign funds and suppliers of services; and

(6) to clarify the application of provisions of United States trade laws to trade in services.

SEC. 3. NEGOTIATION OF INTERNATIONAL AGREEMENTS CONCERNING TRADE IN SERVICES.

(a) NEGOTIATING OBJECTIVES.—Chapter 1 of title 1 of the Trade Act of 1974 is amended by inserting immediately after section 104 the following new section:

"SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO TRADE IN SERVICES.

"(a) Principal United States negotiating objectives under sections 101 and 102 shall be to—

"(1) reduce or eliminate barriers to United States service sector trade in foreign markets, including the right of establishment and operation in such markets;

"(2) modify or eliminate practices which distort international trade in services; and

"(3) develop internationally agreed rules, including dispute settlement procedures, which are consistent with the commercial policies of the United States and which will help ensure open international trade in services.

"(b) As a means of achieving the negotiating objectives set forth in subsection (a), the United States Trade Representative shall—

"(1) in any negotiation under section 101 or 102 concerning barriers to, or other distortions of, international trade in services, pay particular attention to the interests that the States may have in such a negotiation and consult regularly with representatives of State governments concerning negotiating developments;

"(2) not enter into any negotiation involving a service sector over which the States have regulatory responsibility unless he has developed negotiating objectives for such negotiation in consultation with representatives of State governments; and

"(3) with respect to the service sector advisory committees established under subsections (b) and (c) of section 135—

"(A) inform such committees of prospective trade negotiations under section 101 or 102,

"(B) consult with such committees and develop negotiating objectives prior to entering into such negotiations, and

"(C) during the course of any such negotiations, consult with the committees concerning negotiating developments.

"(c) In carrying out its duties under this section, the United States Trade Representative shall consult with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and other interested committees of the Congress concerning—

"(1) efforts to promote international negotiations on trade in services, and

"(2) the strategies and specific negotiating objectives of the United States in such negotiations, developments in the course of such negotiations, and the manner in which any agreements concluded are to be implemented.

"(d) For purposes of this section—

"(1) the term 'services' has the meaning given such term by section 301(d)(3), and

"(2) the term 'barriers to, or other distortions of, international trade in services' includes, but is not limited to—

"(A) barriers to the right of establishment in foreign markets, and

"(B) restrictions on the operation of enterprises in foreign markets, including—

"(i) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

"(ii) restrictions on the use of data processing facilities within or outside of such country or instrumentality.".

(b) REPORT TO CONGRESS.—Not later than 45 days after the date of the enactment of this Act, the United States Trade Representative shall present to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and other interested committees of the Congress—

(1) a proposed work program concerning international negotiations on services for the following 12-month period; and

(2) a detailed analysis of the negotiating interests of the United States in specific service sectors.

(c) CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 1 of the Trade Act of 1974 is amended by inserting after the item relating to section 104 the following new item:

"Sec. 104A. Negotiating objectives with respect to trade in services.".

SEC. 4. REMOVAL OF UNFAIR TRADE PRACTICES IN SERVICE SECTOR TRADE.

(a) DEFINITION OF SERVICES.—Section 301(d) of the Trade Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) SERVICES DEFINED.—The term 'services' means economic outputs which are not tangible goods or structures, including, but not limited to—

"(A) transportation, communications, retail and wholesale trade, advertising, construction, design and engineering, utilities, finance, insurance, real estate, professional services, entertainment, and tourism, and

"(B) overseas investments which are necessary for the export and sale of the services described in subparagraph (A).".

(b) SUPPLIERS OF SERVICES TO BE INCLUDED.—

(1) IN GENERAL.—Subsections (a) and (b) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411) are each amended by inserting "(or suppliers thereof)" after "services".

(2) CONSULTATIONS WITH APPROPRIATE AGENCIES, ETC.—Subsection (d) of section 301 of the Trade Act of 1974, as amended by subsection (a), is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES FOR SUPPLIERS OF SERVICES.—

"(A) SUPPLIER OF SERVICE DEFINED.—For purposes of this section, the term 'supplier of services' includes any person who provides services and—

"(i) whose principal place of business is in a foreign country, or

"(ii) who is owned by a foreign person.

"(B) CONSULTATION WITH APPROPRIATE AGENCIES.—Before the President takes action under this section to impose fees or other restrictions on services (or suppliers thereof), the United States Trade Representative shall, if such services are subject to regulation by any other Federal agency or by any State, consult with the appropriate Federal or State official with respect to such action.".

SEC. 5. INTERAGENCY COORDINATION OF SERVICE SECTOR TRADE POLICY.

(a) COORDINATION OF UNITED STATES POLICIES.—The United States Trade Representative, through the Trade Policy Committee and its subcommittees, shall develop, and coordinate the implementation of, United States policies concerning trade in services.

(b) FEDERAL AGENCIES.—In order to encourage effective development and coordination of United States policy on trade in services, each Federal agency responsible for the regulation of any service sector industry shall advise the United States Trade Representative of pending matters with respect to which—

(1) the treatment afforded United States service sector interests in foreign markets, or

(2) allegations of unfair practices by foreign governments or companies in a service sector,

have been raised, and shall consult with the United States Trade Representative prior to the disposition of such matters.

(c) SERVICES INDUSTRY DEVELOPMENT PROGRAM.—The Secretary of Commerce is authorized to establish in the Department of Commerce a service industries development program in order to—

(1) promote the competitiveness of United States service firms and American employees through appropriate economic policies;

(2) promote actively the use and sale of United States services abroad and develop trade opportunities for United States service firms;

(3) develop a data base for policymaking pertaining to services;

(4) collect and analyze information pertaining to the international operations and competitiveness of the United States service industries;

(5) analyze—

(A) United States regulation of service industries;

(B) tax treatment of services, with particular emphasis on the effect of United States taxation on the international competitiveness of United States firms and exports;

(C) antitrust policies as they affect the competitiveness of United States firms;

(D) treatment of services in commercial and noncommercial agreements of the United States; and

(E) adequacy of current United States financing and export promotion programs;

(6) provide staff support for negotiations on service-related issues by the United States Trade Representative and the domestic implementation of service-related agreements;

(7) collect such statistical information on the domestic service sector as may be necessary for the development of governmental policies toward the service sector;

(8) conduct sectoral studies of domestic service industries;

(9) collect comparative international information on service industries and policies of foreign governments toward services;

(10) develop policies to strengthen the competitiveness of domestic service industries relative to foreign firms;

(11) conduct a program of research and analysis of service-related issues and problems, including forecasts and industrial strategies; and

(12) provide statistical, analytical, and policy information to State and local governments and service industries.

(d) INFORMATION TO STATES.—Except as otherwise provided by law, the United States Trade Representative and the Secretary of Commerce shall provide to State governments such advice, assistance, and information concerning United States policies on international trade in services as such governments might request.

SEC. 6. CONSIDERATION BY UNITED STATES REGULATORY AUTHORITIES OF MARKET ACCESS ACCORDED BY FOREIGN COUNTRIES TO UNITED STATES SERVICE SECTOR INDUSTRIES.

(a) SENSE OF CONGRESS.—It is the sense of the Congress that regulatory authorities in the United States with responsibility for regulation of a service sector should, in developing their policies concerning the access of foreign suppliers to the United States market, take into account the extent to which United States suppliers are accorded access to foreign markets in such service sector.

(b) FEDERAL AGENCIES.—To the extent not otherwise required by law or regulation, whenever any agency of the Federal Government which has responsibility for regulation of a service sector is considering any rule, regulation, or decision which may affect the access of any foreign supplier or suppliers to the United States market, such agency shall—

(1) take into account information presented to it by any interested party concerning the market access in such service sector accorded to United States suppliers in the home market or markets of the foreign supplier or suppliers which may be so affected; and

(2) in taking any action with regard to such rule, regulation, or decision, indicate the extent to which the action taken promotes fairness in international trade within the particular service sector involved.

(c) ACTION BY FEDERAL AGENCIES.—Agencies of the Federal Government with responsibility for service sector regulation may, in consultation with the United States Trade Representative as provided in section 5 of this Act, impose such restrictions on the access of any foreign supplier to the United States market for such service sector as may be appropriate to promote fairness in international service sector trade.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the activities authorized by this Act.

DESCRIPTION OF S. 2051

RELATING TO THE DEDUCTION OF ADVERTISING WHICH IS CARRIED BY CERTAIN FOREIGN BROADCASTERS

SCHEDULED FOR A JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE AND THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE
SENATE COMMITTEE ON FINANCE
ON
MAY 14, 1982

PREPARED BY THE STAFF
OF THE
JOINT COMMITTEE ON TAXATION
MAY 12, 1982

INTRODUCTION

The Subcommittees on International Trade and on Taxation and Debt Management of the Senate Finance Committee have scheduled a joint hearing on May 14, 1982, on S. 2051. The bill (introduced by Senators Danforth, Moynihan, Bentsen, Wallop, Mitchell, Heinz, Symms, Cohen, Gorton, and Jackson) would deny deductions for expenses paid or incurred to a foreign broadcaster for advertising directed primarily to United States markets if the foreign broadcaster were located in a country that denied its taxpayers a deduction for advertising directed to that country and carried by United States broadcasters. The bill "mirrors" a Canadian provision, and Canada is apparently the only country to which the bill would now apply.

Part I of this document provides a summary of S. 2051. Part II is a more detailed description of the bill, including background, present law, issues, and effective date. Finally, Part III is an estimate of the revenue effect of the bill.

I. SUMMARY

Background

In 1976, the Canadian Parliament enacted legislation denying tax deductions for Canadian income tax purposes for advertisements directed primarily at Canadian markets and carried by non-Canadian broadcasters. Presidents Carter and Reagan determined that this Canadian tax rule unnecessarily burdened U.S. commerce under Section 301 of the Trade Act of 1974. Each of them suggested retaliation along the lines of S. 2051, described below.

Present law

Ordinary and necessary advertising expenses paid or incurred by a U.S. taxpayer in the conduct of a trade or business are generally deductible whether incurred in the United States or abroad. In certain limited situations, however, tax results of foreign-related transactions depend on the identity of the foreign nation involved. Examples of harsher tax results include the following: Foreign persons subject to U.S. taxation whose countries tax U.S. persons at discriminatory rates or at rates higher than U.S. rates may owe more taxes than they would otherwise owe (secs. 891 and 896); certain conduct by a foreign nation may make articles produced therein ineligible for the investment tax credit in the hands of a U.S. purchaser (sec. 48(a)(7)); and participation or cooperation by a country in an international boycott will cause U.S. taxpayers who support the boycott to lose certain tax benefits (secs. 908, 952, and 995).

S. 205[illegible]

The bill would deny deductions for expenses of advertising primarily directed to U.S. markets and carried by a foreign broadcaster, if the broadcaster were located in a country that denied its taxpayers a deduction for advertising directed to its markets and carried by a U.S. broadcaster. Although the bill does not mention Canada by name, Canada is the only known country to which the bill would now apply.

II. DESCRIPTION OF S. 2051

A. *Background*

In 1976, the Canadian Parliament amended the Canadian tax law to deny deductions, for purposes of computing Canadian taxable income, for an advertisement directed primarily to a market in Canada and broadcast by a foreign television or radio station (Income Tax Act of Canada, sec. 19.1). This provision, which supplemented a similar provision for print media, became fully effective in 1977. The purpose of this provision was to strengthen the market position of Canadian broadcasters along the U.S.-Canadian border. The Canadian Government officially views the tax provision as a means of protecting the Canadian broadcast industry, whose goal is "to safeguard, enrich and strengthen the cultural, social and economic fabric of Canada." 1/

At the time this provision was adopted by Canada, the U.S. and Canada were renegotiating the income tax treaty between the two countries. The Treasury Department negotiators raised U.S. concerns with the Canadians, but the Canadian negotiators apparently refused to discuss this provision. 2/

1/ Statement of Canadian Government Position Concerning Complaint [under Section 301 of the Trade Act of 1974] of U.S. Television Licensees Relating to Section 19.1 of Canadian Income Tax Act, *citing* Canadian Broadcasting Act of 1968.

2/ *Tax Treaties, Hearings before the Senate Committee on Foreign Relations*, 97th Cong., 1st Sess. 36 (September 24, 1981) (testimony of John B. Chapoton, Assistant Secretary of the Treasury for Tax Policy); Bureau of National Affairs, *Daily Report for Executives*, No. 97 at G-5 (May 16, 1980) (reporting testimony of Donald Lubick, Assistant Secretary of the Treasury for Tax Policy).

After the Canadian Parliament passed the provision denying foreign broadcasting deductions, the U.S. Senate approved a resolution finding that the provision appeared to inhibit commercial relations between Canadian businesses and U.S. broadcasters, and asked the President to raise the issue with the Canadian Government. 3/ In addition, some broadcasters filed a complaint under section 301 of the Trade Act of 1974, 19 U.S.C. 2411(a)(2)(B). The complaint alleged that the Canadian provision was an unreasonable practice that burdened U.S. commerce. On September 9, 1980, President Carter determined that the provision unreasonably and unnecessarily burdened U.S. commerce, reported an estimate that the Canadian provision was costing U.S. broadcasters $20,000,000 annually in lost advertising revenues, and suggested legislation along the lines of this bill (S. 2051). On November 17, 1981, President Reagan sent a message to the Congress concurring in President Carter's views. On December 24, 1981, Representative Conable introduced H.R. 5205, a bill identical to S. 2051.

B. Present Law

Deductibility of advertising expenses

Under present law, taxpayers may generally deduct, in computing their Federal income tax, all ordinary and necessary expenses paid or incurred in carrying on any trade or business. The reasonable cost of advertising, whether paid to a domestic or foreign entity, generally qualifies as a deductible ordinary and necessary business expense under Code section 162.

Tax results dependent on the identity of a particular foreign country involved

Under present law, the income tax consequences of a transaction involving a foreign country ordinarily do not depend on the particular foreign country involved. However, the Internal Revenue Code 4/ provides in a number of cases for more burdensome

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3/ S. Res. 152, 95th Cong., 1st Sess., 123 Cong. Rec. S14349 (1977).

4/ In addition to the Code provisions discussed in the text, the bilateral tax treaties to which the United States is a party alter Federal tax rules for transactions involving the U.S. and the treaty partner in varying degrees. For instance, absent a treaty, interest paid by a U.S. borrower is ordinarily subject to a 30-percent withholding tax if the interest income is not effectively connected with a U.S. trade or business of the lender. Some treaties reduce this rate below 30 percent, while some treaties eliminate the tax altogether.

income tax treatment for foreign-related transactions on the basis of the laws or policies of the particular foreign country involved. These rules have the effect of adversely affecting taxpayers from a particular foreign country or of discouraging U.S. taxpayers from dealing with a particular foreign country or its persons. 5/

Several specific Code sections allow higher taxation of foreign taxpayers from offending countries. For example, there are two alternative remedies that the President may invoke against taxpayers from a foreign country that taxes United States persons more heavily than its own citizens and corporations. When the President makes a finding that a foreign country's tax system discriminates against U.S. persons, he is to double the applicable U.S. tax rate on citizens and corporations of that foreign country (sec. 891). Alternatively, upon a finding of intransigent discrimination against U.S. citizens and corporations, the President is to raise U.S. tax rates on citizens, residents, and corporations of the discriminating foreign country substantially to match the discriminatory foreign rate if he finds such an increase to be in the public interest (sec. 896). In addition, if the President finds that a foreign country intransigently taxes U.S. persons more heavily than the United States taxes foreign persons, he is to increase the U.S. tax rates on U.S.-source income of residents and corporations of the high-tax foreign country to the pre-1967 rates if he finds such an increase to be in the public interest (sec. 896). These provisions have apparently never been used.

Moreover, U.S. taxpayers may have to pay higher taxes because of transactions involving certain countries. The President, by executive order, may eliminate the investment tax credit on articles produced in a country that engages

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5/ By contrast, some tax rules favor dealings with specific countries. For example, convention expenses incurred in Canada or Mexico receive more favorable treatment than similar expenses incurred in other foreign countries (sec. 274). In addition, certain corporations formed under the laws of Canada or Mexico will, if the U.S. parent elects, be permitted to join in the U.S. consolidated return of their parent companies (sec. 1504(a)). Moreover, a mutual life insurance company with branches in Canada or Mexico may elect to defer taxation on income of those branches until its repatriation (sec. 819A).

in discriminatory acts or policies unjustifiably restricting United States commerce (sec. 48(a)(7)). 6/ The power to eliminate the investment tax credit as a retaliatory measure was aimed in part at a number of countries that discriminated in favor of locally produced motion pictures. 7/

In addition, taxpayers participating in or cooperating with an international boycott generally lose certain tax benefits—the foreign tax credit and tax deferral under the rules governing controlled foreign corporations and domestic international sales corporations--allocable to their operations in or connected with countries involved in a boycott (sec. 999). Unlike the previously described rules, the international boycott provisions of the Code do not necessarily require a finding or decision by any person in the executive branch of government. Although the Secretary of the Treasury maintains a list of countries requiring participation in or cooperation with an international boycott, the absence of a country from this list does not necessarily mean that the country is not participating in an international boycott.

C. Issues

The bill, S. 2051, raises the following general issues:

(1) Is it appropriate to deny tax deductions to U.S. persons who incur ordinary and necessary business expenses for advertising directed primarily at U.S. markets through Canadian broadcast media?

(2) Will retaliatory denial of tax deductions for use of Canadian broadcast media to reach U.S. markets prompt repeal of the discriminatory Canadian provision denying deductions for use of U.S. broadcast media to reach Canadian markets?

6/ This provision has apparently never been applied. Recently, however, Houdaille Industries of Florida sought application of this provision. See Bureau of National Affairs, Daily Report for Executives, No. 86 at LL-1 (May 4, 1982).

7/ See S. Rept. No. 437, 92nd Cong., 1st Sess. (1971), reprinted in 1972-1 C.B. 559, 573-74 n. 1.

D. Explanation of the Bill

S. 2051 would deny taxpayers any deduction for expenses of advertising carried by a foreign broadcast undertaking and directed primarily to a market in the United States, but would apply only to foreign broadcast undertakings located in a country that denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking. Although the only known country to which the bill would now apply is Canada, the bill does not mention Canada by name, and it would apply to any other country that had a tax provision similar to Canada's.

If Canada repealed its rule of nondeductibility, the bill would have no further application to Canada from the effective date of the repeal. 8/ That is, on the first day that a Canadian taxpayer could make a deductible payment to a U.S. broadcaster for advertising directed primarily to a Canadian market, a U.S. taxpayer could make a deductible payment to a Canadian broadcaster for advertising directed primarily to a U.S. market.

Under the bill, the term "broadcast undertaking" includes, but is not limited to, radio and television stations. Transmission of video programming by cable would also be considered a broadcast undertaking.

The bill would disallow deductions for foreign-placed advertising only if the advertising were directed primarily to a United States market. Whether advertising is primarily directed to a United States market would be a question of intent. In the event of a dispute, objective determination of subjective intent could depend on a number of factors, which could include the geographic range of the broadcast, the distribution of population within that geographic range, the proximity of the advertiser's place of business to the border, whether the purchaser of the advertised product or user of the advertised service would ordinarily come to the advertiser's place of business (or whether the advertiser conducted a mail-order sales business or a mobile service business), and even the nature of the broadcast program the advertiser sponsored (e.g., a sporting event featuring teams from one of the two countries).

8/ It is, of course, unclear whether Canada would repeal its rule in the face of this bill. The use of U.S. broadcasters by Canadian advertisers affected by the Canadian legislation would likely have been greater than the use of Canadian broadcasters by U.S. advertisers who would be affected by the bill. S. Rept. No. 402, 95th Cong., 1st Sess. 1 (1977). The Canadian Parliament may believe that Canada retains a comparative advantage even upon enactment of the bill, and political factors might also be important.

The bill would automatically become effective without any finding or action by the executive branch (although the Secretary of the Treasury could announce those countries to which the bill applied). The determination of the nondeductibility of advertising expenses accordingly would be made in the first instance by the taxpayer, who would be expected on his return to reduce his deduction for advertising expenses by the amount of such expenses paid or incurred to foreign broadcasters for advertising directed primarily to U.S. markets through broadcast undertakings located in a discriminating country.

F. Effective Date

The provisions of the bill would apply to taxable years beginning after the date of its enactment.

III. REVENUE EFFECT

This bill is expected to have no appreciable revenue effect.

STATEMENT

OF

SENATOR DANIEL P. MOYNIHAN

at hearings
on Bills Related to Trade in Services

before the

SENATE FINANCE SUBCOMMITTEE ON TRADE

May 14, 1982

Senator Moynihan

May 14, 1982

Mr. Chairman:

It is most appropriate that today, in the midst of this committee's deliberations on how to strengthen our trade laws so as to promote open markets for U.S. service exports, that we consider legislation intended to resolve a long-standing irritant in U.S.-Canadian trade relations. This committee has been exploring the need to strengthen the Executive Branch's ability to reduce trade barriers by negotiation. The border broadcast issue before us today provides a rare opportunity not only to analyze the deficiencies in our trade laws in terms of an actual case, but a real possibility of working with the President to demonstrate that a service industry can use the Section 301 process to obtain fair access to a foreign market.

I feel a personal obligation to find a means to resolve the border broadcast dispute this year. One of my earliest acts as a member of the Senate was to introduce a resolution (S. Res. 152, April 26, 1977) calling on President Carter to raise the broadcast tax discrimination issue with the Government of Canada. The Senate passed the resolution unanimously.

At that time I stated before the Senate:

> The Senate in this amendment, calls upon the President to take up this matter with the Government of Canada in the spirit of comity and cooperation in recognition of what is involved is not simply a direct commercial interest but a much larger and more important matter of free communication between our two countries.

My colleague from New York, Senator Javits, in endorsing my resolution told the Senate:

> Canada has treated us, in my judgment, very roughly in this matter. . . . We should make it crystal clear that we do not appreciate the idea that U.S. broadcasters should be so blatantly discriminated against by the tax laws of Canada.

Canada ignored the Senate then and has repeatedly refused to negotiate on this issue. Canada has remained intransigent throughout the nearly four years that 15 broadcast stations (including WIVB in Buffalo and WWNY in Carthage-Watertown) have pursued a Section 301 complaint. Two Presidential messages to Congress have failed to move Canada. Private offers to reach a compromise on an industry-to-industry basis, put forth by the very highly regarded Les Arries, President of WIVB, under the auspices of the National Association of Broadcasters, have been flatly rejected.

We have politely warned Canada in carefully measured words; we have allowed Canada opportunity to participate in our Section 301 process through government consultations and industry participation in two Section 301 hearings and the filing of several sets of written comments; we even extended an olive branch by unilaterally granting a special exemption to Canada from restrictions on the tax deductability of the expense of attending business conventions outside the United States.

Where has our reasonable approach taken us? Nowhere. We have tried the cautious approach. We have offered to negotiate toward a solution which gives adequate protection to the legitimate national cultural interests of Canada yet provides the U.S. broadcasters--whose service the Canadian consumers demand and by which the Canadian broadcast and cable industries prosper--with a fair opportunity to compete in the marketplace for compensation.

Such unremitting recalcitrance should not go unrequited. That is why I joined the chairman of the International Trade Subcommittee in sponsoring the mirror legislation, S. 2051, as recommended by President Reagan. That is why I agree with the chairman's sentiments, expressed upon introduction of the bill, and reiterated today in his written statement, that the mirror bill may require amendment. An expanded mirror bill appears to be the only means by which the Canadian Government will consider opening its market to U.S. broadcast stations on an equitable basis.

Mr. Chairman, the problem before this committee is how to obtain sufficient leverage to back up the Section 301 finding in the border broadcast case. I ask of this committee:

-- Of what benefit is a finding of an unfair trade practice that burdens and restricts U.S. commerce, if that practice remains unchanged?

-- Of what benefit is a commitment to the 301 process, if an industry wins its case, but the offending practice remains unchanged?

-- Of what benefit are messages to Congress by two Presidents and the bipartisan support in both Houses, if entry to the foreign market remains restricted?

Mr. Chairman, we can hold hearings forever about strengthening Section 301, about reciprocity, about trade barriers, but today we have an opportunity to support the trade laws we enacted and solve an acknowledged and longstanding problem. The time has come to stand up to Canada on this issue.

STATEMENT OF DAVID G. GLICKMAN, DEPUTY ASSISTANT SECRETARY OF THE TREASURY (TAX LEGISLATION) FOR THE SUBCOMMITTEES ON INTERNATIONAL TRADE AND TAXATION AND DEBT MANAGEMENT OF THE SENATE COMMITTEE ON FINANCE

MAY 14, 1981

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to submit this statement on behalf of the Department of the Treasury in support of S. 2051, which would deny deductions under section 162 of the Internal Revenue Code for advertising directed primarily to U.S. markets on certain foreign radio and television stations.

The bill is a response to a 1976 amendment to the Canadian tax law (Bill C-58) which provided that Canadian advertisers may not, for Canadian tax purposes, deduct costs of advertising on foreign radio and television stations if such advertising is directed primarily at Canadian markets.

U.S. broadcasters located close to the Canadian border have lost many millions of dollars in advertising revenues as a result of Bill C-58. Since enactment of that Bill, the U.S. Government has made numerous representations to the Canadian Government, both formal and informal, in an effort to convince Canada to repeal or modify this discriminatory legislation. Canada has consistently refused.

As the Committee is aware, the United States signed a new income tax treaty with Canada in 1980. This treaty was under negotiation for a number of years, and, since C-58 was first announced, considerable U.S. negotiating effort was devoted to seeking the inclusion of a provision in the treaty which would reinstate Canadian deductions for expenses of advertising on U.S. radio and television stations. The Canadian negotiators insisted that they had no authority to override Bill C-58. Though the policy was implemented through tax legislation, it was considered by the Canadians to be a matter of social and cultural policy, not tax policy, and tax policy officials were not empowered to alter that legislation. It became clear that if the U.S. negotiators were to insist on a repeal or modification of C-58 in the new tax treaty there could be no treaty. During the same period, Administration trade policy officials were also seeking, without success, to resolve this issue.

It is now evident that the United States Government must take action to redress the grievance. Retaliatory action is authorized under Section 301 of the Trade Act of 1974. That section authorizes relief from foreign practices which violate international rules or are unreasonable and burden or restrict U.S. commerce. Presidents Carter and Reagan have both concluded that the Canadian practices fall within the terms of Section 301 and have proposed the legislation before the Committee in response to those practices. S. 2051 would directly mirror, with respect to Canadian broadcasters, the effect of C-58 on U.S. broadcasters. It would amend section 162 of the Internal Revenue Code by adding a subsection denying a deduction for U.S. tax purposes for expenses of advertising carried by a foreign broadcast undertaking which is directed primarily to a U.S market. The provision would apply only with respect to broadcast undertakings, defined to include radio and television stations, located in a foreign country that denies deductions for advertising placed with a U.S. broadcast undertaking directed at a market in that foreign country.

The proposed amendment, therefore, would apply today only with respect to Canada, and would cease to have effect if and when Canada repeals its restriction on advertising deductions.

Treasury believes that this bill should be enacted promptly. This matter has gone unresolved for six years. Action now is necessary to dispel the notion that the United States has not been serious in the concern it has expressed and that we will continue to sit back and accept the Canadian action.

We do not believe, as some have suggested, that in taking this action against Canada we would be harming our own people (U.S. advertisers) more than Canadian broadcasters. The U.S. markets served by the Canadian broadcasters are also served by U.S. broadcasters. Any U.S. advertising directed at U.S. markets can reach those markets satisfactorily through U.S. broadcasters. By shifting any advertising they are now placing on Canadian stations to U.S. stations, the U.S. advertisers can continue to reach their targeted markets and their advertising expenses would be fully deductible. The Canadian broadcasters located near the U.S. border, however, will feel the effects of the legislation through lost advertising revenues, and, it is hoped, will bring pressure upon the Canadian Government for repeal or modification of C-58.

In summary, I urge the prompt approval of S. 2051 as a clear message to Canada that the United States finds the policies of the Canadian Government in this regard to be totally unacceptable.

Senator MOYNIHAN. A very pleasant good morning to our guests. May we have order, please.

I am constrained to inform you that the Senate was in session until the hour of 5:30 this morning, and so we may not have as full an attendance in the early hours as the occasion and subject would ordinarily dictate.

I have a series of statements, first by the chairman of our subcommittee, the distinguished Senator from Missouri, Mr. Danforth, and at his request and with the greatest pleasure I shall read that at the opening this morning:

[Opening statement of Senator Danforth follows:]

In our effort to fashion a comprehensive trade policy for the United States, we are only just beginning to move beyond the fledgling approaches to trade and services set out in the Trade Act of 1974. In the process, we are discovering just how little we know about the services sector in general and trade in services in particular.

Accounting for some $40 billion in exports in 1981, the services sector constitutes a major and growing factor in our trade picture and one that we must come to terms with. In this context, I should like to commend the efforts of Senators Roth and Chafee, who have taken the lead in attempting to track these measures in S. 2058. I commend the key leadership of Ambassador Brock and his staff at the USTR, the United States Trade Representative, in the interests of the trade policy of the United States and the framework for international negotiations on trade.

As I said before, if this Committee can deal with tomorrow's trade problem today we will be ahead of the game in the years to come. We already are encountering growing barriers to U.S. services, as witnessed by the problem which prompted my introduction, with Senator Moynihan, of S. 2051 on February 2nd of this year.

At the time I noted, this bill seeks to redress an unfair negative trade imbalance affecting U.S. broadcasters. Two Presidents have called for Congress to enact legislation to bring about an end to discriminatory practice.

Together with 10 co-sponsors, including six members of this Committee, and the 13 co-sponsors of the House companion bill introduced by Congressman Barber Conable, I am committed to resolving the dispute expeditiously. I intend to work with Ambassador Brock to assure that Canada recognizes the seriousness of this problem.

As I noted when I introduced S. 2051, the border broadcasting case is simple when viewed in trade policy terms. The restrictive foreign trade practice has impacted adversely on the export of a U.S. service. The foreign trade practice is a clear distortion of the principle of free trade. Imposition of an offsetting barrier for the purpose of convincing the Canadians to eliminate their restrictive trade practice is now necessary.

The more difficult task before us is to identify an effective and appropriate offsetting barrier. The significance of this task was made clear to me when I was recently informed by a high-ranking Canadian official that the bill as introduced will have no impact whatsoever on the Canadian position. Clearly, we must seek a more appropriate alternative if this effort is to be effective.

If we are to hope for the elimination of the Canadian practice, we must go beyond the sectoral mirror concept incorporated in the administration's proposal to include services which will provide a more significant incentive for the Canadians. In this context, it appears that we should be looking for an alternative within the following guidelines:

The impact should fall, at least in part, on the same Canadian interests that have supported the unfair trade practice in border broadcasting;

Its potential effect on Canadian interest should be strong enough to convince the Canadian Government that resolution of the issue is in their best interest;

Negative impact on U.S. interests should be kept to an absolute minimum;

And it should terminate as soon as the unfair trade practice is eliminated.

My staff is viewing several proposals which seem to fall within these criteria. I expect to recommend a specific response in the near future and seek the support of this committee.

And that, as I said, was the opening statement of Senator Danforth, who is the chairman of our committee.

My distinguished colleague and friend Senator Roth is here now and can assume the chair and, if he wishes to, present his own statement.

Senator ROTH. Today, the subcommittee is holding hearings on the Trade in Services Act of 1982, S. 2058, and legislation to retaliate against foreign unfair restrictions on U.S. broadcasting, S. 2051. Both bills have a common goal, a common effort: To gain international market rights and opportunities for U.S. service firms and workers.

I feel strongly that there is a need, a strong need, for multilateral codes of conduct governing services and trade. Frankly, I do not think I have to say this to the group here today, but services are really the unsung heroes of our domestic economic and international trade picture. For example, last year, while merchandise registered a $40 billion balance of trade deficit, I am pleased to point out that services were $41 billion in the black.

Equally important, services employ more than 54 million Americans and account for 15 million or 87 percent of all new jobs created over the last decade.

Despite this success and achievement, the fact is we are failing to take adequate care of them. The Government has too often treated services as an afterthought in U.S. domestic and international trade law. As a result, we are beginning to see, for a number of reasons, our international market share decline, and we are concerned that the same thing could happen to services trade as happened in other areas.

Now, the Trade in Services Act is intended to reverse this trend and hopefully move U.S. objectives for services trade and investment to center stage. Our bill calls for negotiations and, while negotiations are not expected tomorrow, it does provide the President with a clear mandate from Congress to negotiate and retaliate, if necessary.

This legislation would set the stage for such negotiations by establishing a work program both here and abroad. It is critically important that we be prepared, well prepared, regarding where we are, what our deficiencies are, and what the differing needs and requirements of the services industry are.

It is important to set the stage by developing consultative mechanisms with States to insure their sovereignty—a subject I will be particularly interested in discussing with the distinguished USTR. It will be important to set the stage by clarifying U.S. laws to retaliate against unfair practices and by improving coordination on services throughout the Government.

I strongly believe that we must pass this legislation. We need to pass this legislation now. U.S. jobs depend on it. U.S. trade depends upon it.

I will include, without objection, my statement in its entirety.

[The prepared statement of Senator Roth follows:]

STATEMENT OF
WILLIAM V. ROTH, JR. U.S.S.

HEARING ON S. 2058 AND S. 2051

The Subcommittee on International Trade will today hear testimony on two pieces of legislation dealing with international trade in services. The first, S. 2058, is the Trade in Services Act of 1982 introduced by me and supported by Senators Chafee, Inouye, Durenberger and Cochran. The second, S. 2051, introduced by Senator Danforth with ten co-sponsors, is the so-called "mirror" bill designed to retaliate against foreign unfair trade restrictions on the use of U.S. broadcasting services.

These bills point to the same conclusions -- the United States must begin to assert its rights in international services trade. We must develop general multilateral codes of conduct and retaliate decisively when unfair foreign practices injure U.S. firms and workers.

Services are the unsung heroes of our international trade picture. While we have seen U.S. merchandise trade slide deeper and deeper into deficit, trade in services has consistently been in the black over the past decade. In 1981, services industries recorded a balance of trade surplus of $41 billion, outweighing the $40 billion shortfall in goods. In fact, from 1980 to 1981, services exports grew from $121 billion to nearly $140 billion, for an increase of more than 15 percent in one year.

Moreover, services -- or "invisibles" -- are important to our domestic economy, generating over half the nation's gross domestic product and providing jobs for more than 54 million Americans. And their importance is growing. From 1970 to 1980, the United States saw a net increase of more than 15 million jobs in the services sector, accounting for a whopping 87 percent of the increase in job opportunities during that ten-year period.

Despite the key role services play, however, we are failing to recognize their importance. We are failing to take sufficient care of U.S. services in international trade.

As a result, we are losing precious market share to international competition. While global trade in services has grown over the past decade at two and one-half times the pace of world merchandise trade growth -- that is, from $85 billion to $300 billion -- the U.S. share of that total has dropped by 20 percent.

While some erosion is unavoidable as other countries develop new industries, we must nevertheless guard against wholesale losses.

Otherwise, we could see services trade go the way of merchandise -- that is, from surplus to ever-expanding deficits.

Make no mistake; the problems faced by our services firms are serious. U.S. airlines, for example, are restricted from operating on an equal footing with local airlines in Japan. U.S. insurance companies face discriminatory tax policies and high minimum capital requirements in a vast number of countries. U.S. accounting firms are threatened with a European Community decision on auditors' qualifications which could restrict their activities in that market. The list is long and growing.

Yet, we in the public, as well as the private, sector have not placed adequate priority on services trade. We have not yet done our homework, and much homework needs to be done.

We must begin to work diligently now if we are to guarantee a continuing predominant role for U.S. services industries in the world economy.

Unfortunately, we lack the domestic mandate or the international discipline to achieve that objective.

Unlike goods, services have often been treated as an afterthought in trade law. The Trade Act of 1974 was the first attempt to raise the issue of services trade in international consciousness, charging the President to negotiate down barriers in that sector, as well as in goods.

Despite that mandate, however, little was accomplished for services during the ensuing Tokyo Round of Multilateral Trade Negotiations under GATT. From 1975 to 1979, nearly 100 countries met to reduce import duties on goods and to create new international rules for the treatment of merchandise imports and exports. Out of these talks came codes of trade conduct covering government procurement of goods, subsidies for goods, licensing for the importation of goods, and so on.

Services were virtually ignored. As a result of this and previous negotiations' neglect, we do not have adequate rules at home and multilaterally to deal with international trade in services.

And, we risk losing valuable sales and employment opportunities if we do not begin to work to re-focus our priorities.

This is what my Trade in Services Act is intended to do. This bipartisan bill is an effort to improve the treatment accorded international services and to move services to center stage in the domestic economic and global trade arenas.

Among its provisions, the legislation provides a clear mandate to the President to place a high priority on negotiations to reduce services trade barriers. While no one expects negotiations to start tomorrow, we must lay the groundwork now to prepare for future talks. We must develop and implement a comprehensive work program in the GATT and at home to identify problems in services trade and to develop options for dealing with the diverse industries that comprise the services sector.

The longer we in government, business and labor wait to undertake such a program, the more likely it will be that our trading partners will pull the rug out from under us, capturing markets once supplied by U.S. firms and erecting insidious barriers to trade.

The Services Trade Act would also clarify and expand the coverage of U.S. law to deal more effectively with trade-in-services problems.

In the past, when a complaint regarding a foreign unfair trade practice was lodged by a service firm, the complaint was often used as a political football. It was tossed from agency to agency, while Executive Branch officials decided whether the issue was, or should be, covered by our laws. All the while, the U.S. industry twisted in the wind, watching other countries steal away our market share.

It happened in insurance. It happened in broadcasting, and it will continue to happen, unless we clarify our intent under the law.

Provisions of S. 2058 would therefore make clear that trade problems relating to services sales and investment are, in fact, covered under the unfair trade practices portions of our statutes.

At the same time, the bill would enable the President to add services investment-related restrictions to his arsenal of retaliatory weapons. At present, in cases where he is unable to negotiate a satisfactory settlement of an unfair trade practices complaint, the President is only authorized to retaliate by restricting the importation of services. This necessarily limits his action.

Under my legislation, the President would be further authorized to retaliate by taking action against a foreign supplier operating directly in the U.S. market.

While our basic policy toward foreign direct investment is to take a hands-off approach, I believe it is time we begin to act tough when our trading partners refuse to play fair. It is time to use all the tools at our disposal to resolve trade and related problems.

Another objective of this bill would be to improve the coordination of services trade policymaking and the communication between Federal and State entities responsible for services regulation. As Chairman of the Committee on Governmental Affairs, I believe State and local governments should continue to exercise their traditional regulatory authority over such sectors as banking and insurance. Therefore, the Trade in Serivces Act provides that, before entering into any negotiations in a service sector over which the States have sovereignty or responsibility, the U.S. Trade Representative must consult with them on objectives.

I would also expect him to consult on the best means of implementing agreements.

Such consultative mechanisms are not created overnight, but I would hope our Federal trade policymakers have already begun to work out lines of commmunication. Otherwise, we could see serious snags in the future.

S. 2058 would also establish a service sector development program. This plan would authorize expanded collection and analysis of domestic and international services information.

While the United States is heads-and-shoulders above its trading partners in its appreciation of the role of services in the international economy, we are still woefully ignorant of much of the data needed to make sound judgements regarding specific services' performance.

Statistics are a dreary subject to some, but without numbers, we may give away concessions of incalculable value during negotiations and allow practices that are terribly costly to us to continue without complaint. In short, without adequate data, we will continue to operate in the dark.

I believe the Trade in Services Act of 1982 is crucial to our efforts to expand services exports. It is crucial to our drive to create more jobs for Americans. While the legislation will not solve all of our trade problems, it will help set the stage for agreement among our trading partners over the need for comprehensive international rules on services.

I hope today's hearing will show that many in the public and private sector agree. I hope it will show that we are ready to undertake a work program at home and abroad to evaluate services trade and restrictions; to coordinate closely at all levels of the U.S. government to ensure all sectors are treated fairly; and, as S. 2051 proposes, to retaliate forcefully when foreign discriminatory actions injure U.S. interests.

I welcome our witnesses today to get our services trade program on the road.

Senator **Roth**. And at this time I am pleased to call upon Senator Chafee.

Senator **Chafee**. Thank you, Mr. Chairman.

Beginning with the Trade Act of 1974, the United States began to recognize services as a major factor in international commerce, by including services within the negotiating authority of the President under sections 104 and 126.

Pursuant to this authority, in the Tokyo round the United States explicitly included services incidental to the supply of goods in the Government Procurement Code.

Mr. Chairman, I would ask that the balance of this statement be included, but I just would make one point. In February, you and I and Senator Inouye introduced S. 2058. Now, what are we trying to do here with this legislation? The goal of it is, from my point of view, anyway, is to make the promotion of trade in services a major goal of U.S. policy; second, to give the administration a mandate to negotiate an international agreement on services; third, to provide for effective coordination of U.S. trade policy with regard to services through consultation with the States and the Federal agencies and to build up a data base; and fourth, to clarify and emphasize the President's authority to take action under section 301 against practices which unfairly restrict or deny U.S. service industries competitive opportunities overseas.

Mr. Chairman, I look forward to the testimony. I am glad the STR is going to be here, and he is our first witness. And then we have a panel and other panels, and I think they will be helpful to us.

Thank you, Mr. Chairman.

[The prepared statement of Senator Chafee follows:]

STATEMENT OF SENATOR JOHN H. CHAFEE
At International Trade Subcommittee
Hearing on S. 2058
Trade in Services Act of 1982
May 14, 1982

Beginning with the Trade Act of 1974, the United States began to recognize services as a major factor in international commerce by including services within the negotiating authority of the President under sections 104 and 126.

Pursuant to this authority, in the Tokyo Round of the Multilateral Trade Negotiations, the United States explicitly included services incidental to the supply of goods in the Government Procurement Code. While not containing explicit references to services, the Product Standards and Subsidies Codes could also be interpreted as including services.

The Trade Agreements Act of 1979, enacted to implement the results of the MTN Round, requires that service sector representatives be consulted in formulating future trade policy activities. Finally, largely at the urging of the United States, the Trade Committee of the Organization of Economic Cooperation and Development has been studying international service problems over the last several years.

Our efforts during the MTN and the work that is being done in the OECD is just a beginning. With services industries providing 7 out of every 10 jobs, two-thirds of our GNP and accounting for our current balance of payments surplus we must give services an equal billing with goods in our trade policy and strive to expand our multilateral trade agreements to include services.

The major purposes of today's hearing are to establish for the record that this view is shared by the Administration and the private sector and to determine whether there is a need to enact comprehensive services legislation during this session of Congress to achieve this goal.

IN MY VIEW, SUCH LEGISLATION SHOULD ACCOMPLISH FOUR OBJECTIVES:

1) TO MAKE THE PROMOTION OF TRADE IN SERVICES A MAJOR GOAL OF U.S. TRADE POLICY IN LIGHT OF THE IMPORTANCE OF SERVICE INDUSTRIES TO OUR ECONOMY;
2) TO GIVE THE ADMINISTRATION A MANDATE TO NEGOTIATE AN INTERNATIONAL AGREEMENT ON SERVICES, AND TO ESTABLISH A WORK PLAN TO DEVELOP NEGOTIATING OBJECTIVES IN CONJUNCTION WITH THE PRIVATE SECTOR AND THE STATES;
3) PROVIDE FOR EFFECTIVE COORDINATION OF U.S. TRADE POLICY WITH REGARD TO SERVICES THROUGH CONSULTATION WITH THE STATES AND FEDERAL AGENCIES AND THE DEVELOPMENT OF A DATA BASE ON THE FLOW OF TRADE IN SERVICES BY THE DEPARTMENT OF COMMERCE, AND
4) TO CLARIFY AND EMPHASIZE THE PRESIDENT'S AUTHORITY TO TAKE ACTION UNDER SECTION 301 AGAINST PRACTICES WHICH UNFAIRLY RESTRICT OR DENY U.S. SERVICE INDUSTRIES COMPETITIVE OPPORTUNITIES OVERSEAS.

THE PROVISIONS OF THE TRADE IN SERVICES ACT OF 1982, S. 2058, WHICH SENATOR ROTH, SENATOR INOUYE, AND I INTRODUCED IN FEBRUARY OF THIS YEAR, EMBODIES THESE OBJECTIVES. IT IS MY HOPE THAT IN THE COURSE OF THE TESTIMONY OF THE WITNESSES HERE TODAY, WE CAN ESTABLISH THE NEED FOR SERVICES LEGISLATION BOTH FROM A POLICY PERSPECTIVE AND BASED ON SPECIFIC EXAMPLES OF TRADE BARRIERS TO SERVICES.

FINALLY, I THINK IT IS IMPORTANT TO POINT OUT THAT WE NEED TO RECOGNIZE THAT SERVICE INDUSTRIES ARE NOT HOMOGENEOUS AND HAVE VERY DIFFERENT KINDS OF INTERESTS AND PROBLEMS. THEREFORE, IT IS IMPERATIVE FOR THE SERVICE INDUSTRIES TO WORK TOGETHER TO DETERMINE WHAT PROBLEMS AND INTERESTS ARE COMMON TO THE ENTIRE SERVICES SECTOR AND WHAT AREAS ARE NOT SUBJECT TO COMMON SOLUTIONS.

Senator **Roth**. Thank you, Senator Chafee. I would like to thank you for the leadership role you have been playing in this whole service area in bringing it to front and center stage.

At this time it is my great pleasure to call upon our former colleague, the very distinguished U.S. Trade Representative—I understand Senator Moynihan now cares to make his statement. Excuse me, Senator.

Senator **Moynihan**. Only, Mr. Chairman, to put it in the record. I read Senator Danforth's statement but to note that he called attention to our unusual difficulties with Canada, which are so distressing to us because the Canadians are in every respect our friends and neighbors.

We hope we can resolve this. But as Senator Danforth noted, we have not had any very positive response. The very highly regarded Leslie G. Arries, president of WIVB in Buffalo, representing the National Association of Broadcasters, tried to resolve this at the industry level has not succeeded. And so we will turn to our Government as the last resource.

Senator **Roth**. Ambassador, it is a great pleasure to have you here today and I would just like to commend you for being such a key figure in underscoring the importance of the service industry and your great interest. And I can say, at least for one Senator, we are very anxious to work with you in pushing the kind of legislation necessary to help you do the job that needs to be done.

Ambassador Brock.

STATEMENT OF HON. WILLIAM BROCK, U.S. SPECIAL TRADE REPRESENTATIVE

Ambassador **Brock**. Thank you very much, Mr. Chairman. I am just going to summarize some thoughts on this and submit the full statement for the record, if that is permissible.

Senator **Roth**. Without objection.

Ambassador **Brock**. First, thank you very much for the leadership you have taken, Mr. Chairman, as have other members of the committee. This is a fundamentally important issue.

I just got back last night from the OECD meeting in Paris, where we were trying to discuss the trade items of real consequence in the 1980's, and at least for the United States and for myself I think services is at the top of the list. We are going to talk about it at OECD. We talked about it in the quadrilateral meeting I had, Japan, the European Community, and Canada, on Wednesday and Thursday this week, just getting back last night.

If you look at the program we have for the balance of the year, we expect to discuss this sort of thing in the Versailles summit, because it is fundamentally important we establish a more positive atmosphere, and the services is one of the real growth areas that can benefit not just this country but all countries. We obviously expect to press very hard to establish a program in the GATT, which will have its first ministerial meeting since 1973 this November.

And just looking at it in terms of our own interests, 65 percent of our people work in services-related employment, about two-thirds of our GNP is involved. If you look at the job creation potential that you yourself mentioned, we have created 18 million new jobs in the services sector in the last decade, only 2½ million, by the way, in manufacturing.

It is fundamentally important to us, and as a consequence we have within the administration for the past year a very active group, working to develop a work program for the services area. The primary component parts of the strategy are:

First, full use of existing bilateral arrangements with other governments to resolve current trade problems brought to our attention by the private sector;

Second, inclusion of services in the review of export disincentives;

Third, domestic and international preparations for further action;

Fourth, a review of domestic legislative provisions relating to the achievement of reciprocity of U.S. service industries;

And fifth, review of the adequacy of our statistical base on services. And I do not think, Mr. Chairman, it is presently adequate, and I appreciate the interest that you and others have shown in improving that problem area.

We have tried, first of all, to deal bilaterally, as Senator Moynihan pointed out, not with a great deal of success in some areas, but in a lot of areas we have had success. I think the advantage I see to 2058 is that it does help strengthen our hand, particularly and precisely in this area, so that we can perhaps expect greater results.

I think it is fairly obvious there are limits to a bilateral approach, because at least in my area, where we have got 113 people authorized to our entire office, if we spent all of our time dealing with problem by problem, country by country, on a bilateral basis, we are not going to do anything fundamentally in terms of addressing the world trading system, and we are caught up in putting out fires too much today.

Senator **Roth**. If the Senator will yield, I hope to give you a Department next year.

Ambassador **Brock**. We will talk about that later, Senator. I am not sure I want that problem. [Laughter.]

This is not in my prepared text, but it is a matter that constantly troubles me, this very small Office which has a fundamentally large purpose of trying to establish a real system in which the United States can engage with equity and opportunity. Our efforts in the multilateral sense can be diminished by our lack of time because of the impingement of bilateral problems, and you know very well in your own offices how much time you can spend on constituent services. If you do nothing but constituent services, you are never going to get the larger questions answered, and that is one of the things that troubles me somewhat.

Back on the subject again, sometimes I think our ability to deal bilaterally depends almost more on either goodwill or just fundamental economic muscle than it does on anything in law that allows us to negotiate better agreements. So we do need both stronger U.S. law and a set of multinational rules that are enforceable.

That is why we are putting so much emphasis on trying to insure that the GATT begin the analysis that can lead ultimately to the establishment of certain common principles in the services area. We want to start first by doing an inventory of the barriers countries experience; second, to analyze the present GATT articles to see whether they have potential application for services, and I think they do; and lastly, to examine the GATT codes to see what applications they might have for service industries.

Ultimately, I pray that this will lead in the not too distant future to negotiations for international rules to liberalize the services trade. We want a code of conduct with a general set of principles, and then, in all candor, we are probably going to have to do some special work in the individual sectors.

We do need, as you have asked in your legislation, the beginning of those negotiations in the services trade. I think the difference between our present authority which we do have and your bill is that your bill expresses an important political commitment to international negotiations on services and helps to build a domestic consensus, which not only draws national focus here but draws our trade partners' focus to the intensity with which we view the issue.

Another provision that we are most interested in in S. 2058 addresses the role of the States in the international services effort. We simply must not interfere with the States' sovereign rights, and they have sovereign rights, both in banking and insurance, for example. They do have regulatory responsibilities. But we must have, if we are going to have a national trade policy, we must have a partnership with those States to insure that their sovereign interests are preserved while we still have the opportunity to speak on behalf of this country as a whole in negotiating a reduction of barriers to services that we face around the world.

And I think we can do that. We are working now with groups such as the National Governors Association, National Association of Insurance Commissioners, to carry out those objectives.

The services provisions in section 301 have raised two questions that require clarification: One, whether the President has the authority to deny the importation of certain services; and second, whether the President can take action against a service regulated by an independent regulatory agency.

We would like to see these ambiguities cleared up for a couple of reasons. First, we have got to have the tools necessary to deal effectively with foreign trade barriers and distortions, and it is going to take years to develop a proper international, multinational framework. So we have got to have the leverage to manage it bilaterally for now.

Second, we have got to put our own house in order to be sure that we are capable of negotiating and implementing understandings that affect the different bureaucratic entities responsible for the service sector. The regulatory agencies have to have a role in the process, because they have a competence and expertise that is recognized. They have got to be consulted.

But in the final analysis, Mr. Chairman, the President's ability to negotiate trade agreements could be seriously undermined if he does not have sole authority to retaliate where questions of trade policy are at stake. So I have asked for changes in section 301 that will clarify it so that it will conform to its original legislative intent. The President's action, which could be in the form of a decision to deny entry or to impose fees or other restrictions upon imports, should be based on the criteria presently embodied in 301.

While it would be paramount to any other provision of law, it would be outside of the regulatory considerations exclusively reserved for the independent agencies. We really have a grey area here that we have got to be very careful about. We cannot impinge upon their basic criteria for determinations on their decisions, but we cannot have agencies independently exercising ad hoc trade policy decisions.

Well, the provision calling for the service industries development program requires a number of studies to examine the overall competitiveness of U.S. service industries. Our ability to strengthen the service export opportunity cannot be limited to an analysis of foreign barriers alone. It is crucial that we perform an analysis of our own domestic laws and regulations to determine the effect they have on our export competitiveness; and we must further examine the domestic employment effects of liberalizing or modifying U.S. laws relating to these markets.

Since we are relatively open, liberalization of markets should be a benefit to an element of our work force involved in the export of services. But we have got to be careful that the analysis includes those situations where employment disruptions may occur.

We have got to improve our data on international trade and services. Present data shows that we had a surplus of $30 billion. Even that, as the chairman noted, could be $41 billion. We think it could be in excess of $60 billion. We simply do not know, and that is wrong.

The study that was done by Lederer and Sammons examined the methods currently employed to measure trade in services. They made a number of recommendations for improving our data in this area and I strongly, then, as a consequence, endorse the provisions of 2958 to improve data collection in this area.

In conclusion, Mr. Chairman, I applaud the leadership taken by the Finance Committee in considering legislation in this area. It will do a great deal to enhance and improve our opportunity, domestically and internationally. We are committed in this administration to make a major priority of this field in our international negotiations, both bilateral and multilateral, particularly going to the focus of the ministerial meeting this November. And I think the proposed legislation would be a significant contribution to that process.

Let me just give you 30 seconds, then, on the other bill which you have before you. I appreciate your response to the President's recommendation. It has been recommended both by Presidents Carter and Reagan. The Canadian practice denies tax deductions to Canadian taxpayers who purchase advertising services from U.S. broadcasters if such advertisements were directed primarily at the Canadian market.

That practice was the subject of the 301 petition filed by U.S. broadcasters in 1978. President Carter found the practice to be unreasonable in 1980, costing us approximately $25 million annually in revenues, and he and President Reagan both have suggested the mirror bill as a response in the context of the 301 investigation, and frankly, as a response to the fact that we were unable to negotiate bilaterally a successful modification of the practice. It was all that remained to us.

Our purpose in proposing the legislation is to obtain the elimination of the Canadian practice, not, frankly, to engage in it ourselves. But we do not know how else to draw their attention to the matter. I would imagine that, should the mirror bill not bring about a resolution of this dispute, the President is not foreclosed from taking further action pursuant to 301 if he deems it appropriate in an effort to achieve our mutual purpose.

So I guess fundamentally we would urge your favorable consideration of the legislation, and we will try to insure that it achieves the desired objective of changing the practice in Canada.

Thank you for the opportunity to be with you today.

[The prepared statement of Ambassador Brock follows:]

TESTIMONY OF AMBASSADOR WILLIAM E. BROCK
UNITED STATES TRADE REPRESENTATIVE

before the

Subcommittee on Trade
Senate Finance Committee

May 14, 1982

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear again before this committee and discuss the provisions of S. 2058 which addresses some of the authorities I believe the President needs in order to conduct a strong commercial policy in services. As the U.S. Trade Representative, I have devoted a considerable amount of my personal time to services trade problems because I think this is perhaps the most important of the emerging trade issues that we have.

Early this week I attended the annual meeting of the Ministers of the Organization for Economic Cooperation and Development. A number of themes evolved out of this gathering but an important one was the need to address the trade issues of the 1980's. Many service sectors hold significant promise for the future economic health of the world. Services also represents an area where the United States possesses important competitive strength.

Services was a key issue in my discussions with other OECD Trade Ministers in Paris earlier this week. It will be raised at the Versailles Economic Summit as well as at the November meeting of Trade Ministers at the GATT.

We expect the GATT Ministerial to establish a work program on the key trade issues of the 80's. Services will be high on our list of priorities for this work program.

The service sectors of the U.S. economy have become the primary source of economic activity, economic growth, and employment in the United States today. Approximately 65 percent of our GNP is service generated and roughly 7 of 10 American workers are employed in services sectors. Eighteen million new jobs were created by the service sectors alone during the past 10 years, compared to 2.5 million jobs by the goods producing sector of the economy.

The growing importance of services to the U.S. economy is not confined to domestic economic activity. Exports of services have become a major source of export earnings and have helped to offset the deficit in U.S. merchandise trade.

We have every reason to believe that U.S. service exports will continue to grow in the years ahead. Between 1974 and 1980 the value of world trade in services increased by more than 150 percent. We expect to see potential growth opportunities for U.S. exporters of services, many of whom represent the most dynamic sectors of our economy and are highly competitive in foreign markets.

The United States will not be able to reach its full export potential unless we are able to deal effectively with a wide range of foreign barriers that confront many of our service industries. This is why we developed in the Trade Policy Committee a far reaching five-point work program for services. It provided, for the first time, a comprehensive strategy for dealing with service trade issues. The elements of this program are:

(1) Full use of existing bilateral arrangements with other governments to resolve current trade problems brought to the government's attention by the private sector;

(2) Inclusion of services in the review of export disincentives;

(3) Domestic and international preparations for [illegible]

(4) Review of domestic legislative provisions relating to the achievement of reciprocity for U.S. service industries; and

(5) Review of the adequacy of U.S. statistics on trade in services.

The work program established by the Trade Policy Committee was designed to strengthen our ability to deal with immediate bilateral problems that confront service sectors. Through more effective use of bilateral consultations we have been able to reduce a number of trade problems affecting service industries. Nevertheless, these bilateral efforts have also clearly shown the limitations of a bilateral approach, without enhanced Presidential authority to pursue domestic remedies to unfair foreign trade practices in services and the negotiation of internationally accepted rules and procedures for trade in services. I therefore applaud provisions in S. 2058 that would clarify and strengthen Presidential authority in both areas.

Our ability to resolve trade problems in services bilaterally depends either on the good will that exists between the U.S. and some of our trading partners, or the relative leverage we can exert through our overall commercial relationship. The absence of internationally agreed ground rules from which both sides can work to resolve problems is a real handicap. Without an enforceable set of multilateral rules and procedures governing services trade, each case must be argued as an isolated issue based on one country's perception of what is fair.

That is why the United States has undertaken a significant political effort to assure that the GATT begin to exercise trade barriers in services, in preparation for future multilateral trade negotiations in the GATT on trade in services. We are convinced it is in the interest of every country to see open markets for services.

We would like to see a work program undertaken by the GATT that would (a) inventory barriers countries experience in these sectors; (b) analyze the GATT Articles as to their potential application to services, and (c) examine the GATT Codes as to their potential application to service industries. Such a work program should lead to negotiations that will develop international rules to liberalize services trade. One of our aim is to negotiate a Code of Conduct that will incorporate a general set of principles applicable to a cross-section of services industries. We would also like to explore the possibility of sector specific agreements dealing with market access and related issues, where that proves appropriate and desirable.

I believe it is important that you have addressed in legislation the necessity to begin negotiations in services trade. As you are aware, the President has that authority now. Your bill, however, expresses an important political commitment to international negotiations on services and helps build the necessary domestic political concensus that will enable us to participate in such negotiations effectively. While we must first develop the basic framework with our trading partners as to exactly what a services negotiation would entail, the enactment of legislation urging negotiations in services will help communicate the determination of the United States to pursue such negotiations.

Another important provision of S. 2058 addresses the role of the states in the international services effort. Consultations between the Federal and State governments on these issues are crucial because the States have sole regulatory powers over the insurance industry and have significant responsibilities in regulating banks. We must develop a partnership with the States to ensure that their sovereign interests are preserved in the regulatory process.

At the same time our trade negotiator must be able to speak on behalf of the United States in matters affecting foreign trade. I am confident both of these objectives can be realized because of the mutual interest we have in seeing that our service industries have the best export opportunities available without the stigma of legislation that is inconsistent with our international obligations. We are establishing a working relationship with groups such as the National Governor's Association and the National Association of Insurance Commissioners so that the purposes of your bill can be carried out.

The services provisions of section 301 of the Trade Act have raised two questions that require clarification: (1) whether the President has the authority to deny the importation of certain services and (2) whether the President can take action against a service regulated by an independent regulatory agency.

It is important that these ambiguities be cleared up for two reasons. First, we must have the tools necessary to deal effectively with the foreign trade barriers and distortions faced by our service industries. It will take several years to establish the kind of international framework I described earlier, and in the meantime we must have the appropriate leverage to manage bilateral problems. Second, we must put our own house in order so that the United States is capable of negotiating and implementing understandings that affect the different bureaucratic entities responsible for the service sectors. The regulatory agencies must have a role in this process because of the knowledge and expertise they possess for the various service sectors. They must be consulted during the process of negotiations that affect service sectors they regulate. In the last analysis, however, the President's ability to negotiate trade agreements could be seriously undermined if he does not have sole authority to retaliate where questions of trade policy are at stake.

For these reasons I believe there should be changes to section 301 that will clarify the statute so that it will conform to its original legislative intent. The President's action, which could be in the form of a decision to deny entry to a foreign service firm or to impose fees or restrictions on imports of services should be based on the criteria presently embodied in section 301. While such authority would be paramount to any other provision of law, it would be outside of the regulatory considerations exclusively reserved for the independent agencies. This is crucial so as not to infringe on the regulatory agency's authority to deny a foreign license if the application failed to satisfy the usual criteria emobided in the regulatory organization's responsibilities. It would merely confirm the separate delegation under section 301 to address certain international trade problems in the services sector.

The special role of the independent agencies is something Congress will continue to maintain. At the same time it is fairly clear that the Congress intended that the President use his section 301 authority to services industries, some of whom are regulated by independent agencies. I would suggest a clarification of section 301 along the lines just described so that our respective roles are more clearly defined.

The provision calling for a "Services Industries Development Program" requires a number of studies to examine the overall competitiveness of U.S. service industries. Our ability to strengthen U.S. service sector export opportunities cannot be limited to an analysis of foreign barriers alone. It is crucial that we perform a careful analysis of our domestic laws and regulations to determine the effects they have on export competitiveness. We must further examine the domestic employment effects of liberalizing or modifying U.S.

domestic laws relating to service sector markets. Since our market is relatively wide open to foreign service industries, a liberalization of markets should be a benefit to an element of our work force involved in exports of services. At the same time we should be careful to analyze those situations where employment disruptions may occur.

We must improve our data on international trade in services. While official U.S. data for 1980 shows U.S. exports of services of $30 billion, it is likely that actual exports of U.S. services in 1980 were well above that figure, and in fact could have been more than twice that number. Our office, together with a number of other agencies, funded two separate studies of U.S. data on international trade in services. The first study, by Economic Consulting Services, was designed to establish an estimate of U.S. service exports by canvassing all the available private sources of data. While the data available from such alternative services was sketchy at best, they came to the conclusion that U.S. exports in 1980 were probably in excess of $60 billion. The second study by Walther and Evelyn Lederer and Bob Sammons, examined the methods currently employed to measure trade of services, and they made a number of recommendations for improving our data in this area. For these reasons, I strongly endorse the provision in S. 2058 to improve data collection in this area.

In conclusion, Mr. Chairman, I applaud the leadership taken by the Senate Finance Committee in considering legislation that addresses the trade issues of the future as well as those that have been before us in the past. We are one of the few industrialized countries today who are trying to look down the road and plan for what is ahead. Service industries are not new to this country, but their role in the world market is an increasing factor to their future health. The enactment of comprehensive legislation that focuses on all the trade problems, present and future, will do much to ensure stable markets for this dynamic sector of our economy. You can be assured that I will continue my efforts to move the international process forward in this area at the GATT Ministerial. The enactment of services legislation will, however, be the most significant contribution to the entire process. We stand ready to assist you in any way.

Now let me turn to S. 2051, the "mirror" bill, which was proposed by the President pursuant to his authority under section 301 of the 1974 Trade Act. We commend this Committee for responding so promptly to the President's recommendation.

This legislation was proposed initially by President Carter in 1980 and again by President Reagan in 1981 as a response to the Canadian practice of denying tax deductions to Canadian taxpayers who purchased advertising services from U.S. broadcasters if such advertisements were directed primarily at the Canadian market. The Canadian practice was the subject of a 301 petition filed by a group of U.S. border broadcasters in 1978. In 1980, President Carter found this practice, which costs U.S. broadcasters approximately $25 million annually in lost advertising revenues, to be unreasonable and a burden on U.S. commerce within the meaning of section 301.

The Canadian practice began in 1976 with the enactment of Bill C-58 which amended the Canadian tax law as described above not only with respect to the broadcasting media but also with respect to newspapers, magazines, etc. Since that time the U.S. Government has tried repeatedly to seek a negotiated solution to this problem as it affects U.S. broadcasters which would meet the needs of both Canada and the U.S. Negotiated solutions were sought both in the context of the U.S.-Canadian tax treaty and the 301 investigation. However, to date Canada has not been willing to negotiate at all on this issue because Canada believes enactment of C-58 was necessary to promote Canadian cultural development.

Thus, the U.S. has been left with no choice but to take action under section 301. The action taken by President Carter and reiterated by President Reagan is the proposal of the legislation before you. The effect of S. 2051 would be to "mirror" in U.S. law the Canadian practice embodied in C-58. However, the "mirror" provision would apply only to advertising services pruchased from broadcasters located in countries which have a similar practice vis-a-vis U.S. broadcasters. Thus, it would apply to Canada but not to Mexico. Moreover, if Canada at any time ceases its practice, the "mirror" provision will no longer apply to Canada. I might note that the Presidential decision to propose the "mirror" bill was made only after USTR conducted a public hearing on the question of proposed actions under 301 (including the proposal of "mirror" legislation). During that hearing, and at no time since, has any U.S. taxpayer who would be affected by passage of this legislation indicated opposition to the Administration proposal.

The "mirror" bill was one of several options considered by USTR in the context of the 301 investigation. It was selected as the "appropriate" action to be taken under 301 because it constitutes a measured response to the Canadian practice. Let me emphasize, as did President Reagan in his message to Congress, that our purpose in proposing this legislation is to obtain the elimination of the Canadian practice; and let me remind the Committee that should the "mirror" bill not bring about a resolution of the dispute the President is not foreclosed from taking further action pursuant to section 301 if he deems it appropriate in order to achieve this purpose.

I will close by saying that I am convinced that if Canada were willing to work with the U.S. on this issue, a solution could be found which could meet Canada's cultural development interests as well as the concern of U.S. border broadcasters. However, in the absence thus far, of Canadian willingness to seek a mutually acceptable resolution of this issue, the U.S. must act to demonstrate its strong and continuing concern about unreasonable restraints on U.S. access to foreign markets in the services sector and its willingness to take all appropriate action to improve U.S. access to such markets. Furthermore, we feel a commitment to demonstrate, not only to the border broadcasters who have shown admirable patience in pursuing a remedy through the 301 process, but also to other service industries that section 301 is an effective means to remove foreign barriers to U.S. service exports. We therefore urge the Committee to act favorably and expeditiously on S. 2051.

Senator Roth. Thank you, Mr. Ambassador.

First of all, I would just like to make a general comment. I jokingly referred to the organization of the Government. Well, this is not the time or place. Nor do I ask you for any comment. I do want to underscore and emphasize that I am concerned that this Government, this executive branch, is not properly organized to meet the challenge of the eighties.

I think trade is critically important to the recovery of this country. I think we are going to have to take some hard looks at the splits, the splinters in the executive branch, the fact that we do not have Government structured in such a way to give you or whoever is the chief trade man the kind of backup that I believe is necessary.

I do congratulate you and Secretary Baldrige and others for making what I consider an impossible situation work as well as possible. But Senator Brock, or Mr. Ambassador—you have got so many titles——

Senator Moynihan. Would the Senator yield for one comment?

Senator Roth. Yes.

Senator Moynihan. If we help him get the right amount of staff and the right amount of legislation, that will only give him more time to campaign this summer. [Laughter.]

Senator Roth. That depends on your perspective. We are looking forward to that. [Laughter.]

We will follow the 10-minute rule.

Mr. Ambassador, you did mention in your opening statement that you have already discussed the question of services with a number of our friends and allies. In light of your recent trip to OECD, what can you tell us about the responsiveness of our trading partners to your suggestion, the U.S. suggestion, that we enter into serious discussions and negotiations on services trade and programs?

Ambassador Brock. I think we made a lot of progress, Mr. Chairman. I think in this committee, as a matter of fact, about this time last year we talked about the need to establish this as not only a priority for our own country, but for the world system.

At that time we received a fairly skeptical response on the part of most of our trading partners. The LDC's I think viewed it with some suspicion, that it might be an effort to seal the U.S. market opportunity and guarantee it forever. Our more advanced trading partners had not done the analysis to see where their own interests lay.

And it took some time. We have been engaged now for close to a year in what I referred to as a precinct program, trying to develop the political constituency for improving the system. We have had a lot of conversations. I have been throughout all of Asia, I was a month ago, and all of South America, and most recently in Europe with the OECD. And I think it is beginning to have an impact.

We have now the active support of Japan. We did not have that before. Prime Minister Suzuki himself publicly has endorsed the initiative and declared Japan's support. That is a fundamentally important change. We have the willingness now of the European Commission to support the analytical work program that we are proposing for the GATT. We have the considerable increase in interest from a number of the developing countries.

There still is concern. There still is a lack of understanding of what it is we are trying to achieve. But that is beginning to wash away as we explain that all of us have a stake in this area. It is insane to think that you can have a world system that deals only with something tangible—you exchange pens and pencils and shirts and shoes—but you allow the increasing establishment of barriers in the facilities that allow for the exchange of this particular pen and pencil, and that is banking, insurance, shipping, engineering, consulting, data transmission, communication, all of those deals. Lawyers and accountants are facing increasing barriers. It is a tremendous growth area and it is one that allows for the facilitation of trade in goods.

So if you want to have more trade in goods, you have got to liberalize trade in services. And we are beginning to communicate that, I think. I do not think it is yet easy, but I think the prospects are substantially better than they were a few months ago of getting a coherent work program in the GATT to begin to reach for solutions in the area.

It is not going to be quick. Do not mistake me. It is going to be hard and long. But I think it is something we have got to begin now.

Senator ROTH. It is encouraging you are making some progress, so that at last some of our friends are beginning to see the importance of such negotiations. As you well know, we also have that problem here at home. There are those in the private sector, in the services industries and others, who suggest that we should avoid negotiations in services; that, since the United States is the largest single supplier of services in the world, it has the most to lose from negotiations.

How do you answer that?

Ambassador BROCK. We are losing it now, Mr. Chairman. Every single day of every week of every month, we are seeing some new barrier imposed in some country around the world to the U.S. ability to provide services. Our share of the world's services trade has gone down from 19 to 15 percent. That still leaves us by far the largest factor but that is a really stupid pattern, because we are the most competitive. We have the best product, we have the best price by far. And it is irrational for us not to establish rules of the game that will allow for the free flow and exchange of services to the benefit of all parties.

I find it absolutely incredible today, with the world in great political turmoil because of the economic malaise that we face in every country—not just the rich, not just the poor, but all of us are facing real severe economic difficulty today—it is insane and incredible that we should suggest the allowing of more barriers to be imposed.

The only way we are going to get out of the press we are in right now is to open up the trading process and let the system work, let the flow begin to expand and create the jobs that all of us have got to have.

Senator ROTH. I think part of the concern is based on a general belief that the United States is not tough enough in negotiations.

Having watched you negotiate both as a Senator and as a chairman of a party, I must say I think that should allay those concerns.

But in your testimony, you make mention of two problems that are somewhat intertwined, and those are the relationship between trade and the Federal Government and the States on the one hand, and the relationship between the executive branch and the so-called regulatory agencies on the other. I am a strong believer that we have to speak with one voice in trade matters.

The question of speaking with one voice does come up when we consider the responsibilities of the regulatory agencies, particularly the independent regulatory agencies. Do you think that there should be perhaps some kind of executive branch oversight, even possibly Presidential veto, in the trade-in services area? One of my concerns is that if your regulatory agencies begin going their own way, we will see a splintered policy in this Government, we will see sector-by-sector bilateral balancing by these various sectoral regulatory reform agencies.

How do we address this problem?

Ambassador Brock.. I think one of the most dangerous things that I see occurring right now in this country is the temptation to think that we can deal with each specific problem as if it were unrelated to the whole. You cannot do that and have a coherent policy. If you had 50 State policies in trade, you have 50 trade policies. As a matter of fact, you have no trade policy.

If you have a different policy emanating from each regulatory agency based upon the current mix or composition of that particular independent commission, we simply would have no trade policy. And you cannot build an international trading system, an institutional process, if we, almost uniquely in the United States, are not consistent.

We have got to have a policy that is clear, simple, understandable, enforceable, and then we can lead the world to a systematic approach in the liberalization of trade. So I very much share your concern.

I simply cannot support any action that would give to each of the several independent agencies the authority to make trade policy without the concurrence of the President. The agencies are designed to approve licenses or take whatever steps they are going to take primarily on the basis of domestic considerations and the mandate that they have been given by the Congress and the law. That is fine and they ought to be independent in that regard.

But when they get into the establishment of trade policy by independent judgment unrelated to the establishment of trade policy for the country as a whole, they can destroy our total policy with a very small action that was taken entirely out of context. I think that would be disastrous, and it seems to me we must reserve for the President the ultimate decision as to whether or not an action is in consonance with the total national interest.

Senator Roth. I want to pursue this discussion vis-a-vis the States and their sovereignty, which I think is important. But my time is up.

Senator Chafee?

Senator Chafee. Thank you, Mr. Chairman.

Mr. Brock, have you done any survey of any impediments that we might have in our own services here in the United States? Can we be accused of the pot calling the kettle black?

Ambassador **Brock**.. Not much. We can, in the sense that we were discussing there. Other governments find or other trading partners find it a little bit confusing when they look at the variety of State laws, for example, that exist in the insurance field.

But I do not really think that that charge would hold water, because the United States has one redeeming characteristic in almost all of its policies, and that is transparency. We are wide open in what we do. We allow other businesses from other countries to participate in our processes, to testify in the establishment of standards and so forth. We do not have a similar right in their country.

So that they know what we are doing, they know why we do it. They have a right to participate in the establishment of those rules. That is a fundamentally important principle that we are trying to establish in the multinational system, multilateral system. I do not think that the exceptions to the general principles we are seeking in the United States are of much weight.

But I think that has to be part of any study that we undertake domestically, to be very sure that we are clean.

Senator **Chafee**. I notice we have got a long list of witnesses, Mr. Chairman. So I am going to restrict my questions to just one more.

Would you like to see us enact this 2058, with the exception of section 6 prior to the November GATT ministerial?

Ambassador **Brock**. Yes, sir, it would be helpful.

Senator **Chafee**. It would be helpful to you?

Ambassador **Brock**. Yes, sir, it would.

Senator **Chafee**. Thank you, Mr. Chairman.

Senator **Roth**. Thank you.

Senator Moynihan?

Senator **Moynihan**. Mr. Chairman, I am conscious of the committee's time and most especially of Ambassador Brock's time. But I would take a moment, if I can, to ask him just a few questions on S. 2051, which Senator Danforth and others of us have introduced, if only because this seems to be getting to be a legendary subject in this committee. It was the first measure I got involved with in foreign trade and it has been around since, of course, the beginning of the Canadian legislation, which is about 1976, if I remember.

If we could just solve it, it would make so many other things better. But, Mr. Ambassador, as you know, along with Senator Danforth and other members, I cosponsored S. 2051, the so-called mirror-image legislation. The legislation is designed to help resolve our longstanding border broadcast dispute with the Canadian Government. I am concerned that if the U.S. Government cannot resolve a simple, straightforward dispute involving a relatively small amount of money, it is hopeless to expect that our Government can resolve more complicated or more significant trade disputes.

What does the administration hope to do to insure that the Canadian broadcasting dispute does get resolved this year?

Ambassador **Brock**. Senator, you are one of the best politicians I know and you know better than I do that it is the small problem that can create the biggest problem. We may be talking about a little amount of money, but there is a serious abrasion between these two countries. It involves a principle that is important to us. We have taken it seriously.

We have tried to be as honest and as open with the Canadians as we can, expressing the intensity of our concern. They have a totally different view of the matter, and as a consequence we felt that the introduction of mirror legislation was the last remaining step that we could take to demonstrate the commitment we had to get this matter resolved once and for all.

We simply cannot allow it to fester. The relationship between these two countries is too important to be muddied up by an issue of this small magnitude.

Senator **Moynihan**. Yes, I know that the President requested the mirror legislation, and I applaud him for it, regretfully to report that our good friend and good neighbor, the Canadian Ambassador to the United States, Ambassador Gottlieb, has stated unequivocally that the legislation would not persuade the Canadians to alter their position on the broadcast problem, which goes from sea to shining sea, as you know.

What is your reaction in terms of how this legislation can be strengthened, if you think it might?

Ambassador **Brock**. Well, I had hoped that enactment of the mirror legislation, perhaps even its introduction, would cause the Canadians to eliminate their practice. However, in view of Ambassador Gottlieb's conversation with Senator Danforth, I am afraid it may be time to think of new ways to encourage the Canadian Government to deal with this problem.

I do not have any magic solutions of what is necessary to move the Canadians, but I do believe that we need to consider other options which would create an economic incentive for Canada to resolve the issue. I do not want it to escalate into a trade war through an excessive retaliatory response on our part. That would not be in our interest, nor Canada's. But I do believe it would be possible to take additional action without increasing that danger.

Senator **Moynihan**. Well, I thank you very much. This must not become the Falkland Islands of United States-Canadian relations.

Ambassador **Brock**. No, no.

Senator **Moynihan**. And if additional economic incentives, as you say, can be found, it may be they can be pursued. Once we settle this, we will wonder how we ever got into it and let it go on between two big trading partners who could not live without each other. We will look back and say, how did we get into that.

But I think of the many achievements in your distinguished career, scarcely half over. I look forward to you being able to say about you that anyone who can bring peace to the Republican Party can bring peace to broadcasters on the United States-Canadian border.

Thank you very much.

Senator **Chafee**. I would point out, the distinguished Ambassador's career as USTR is only a quarter over, not a half.

Senator **Moynihan**. I meant in his many pursuits. If he does this there must be some reward for doing it. You do not just disappear.

Ambassador **Brock**. I hope my principal accomplishment is not the settlement of the mirror broadcasting issue. But I do think we can solve this one.

Senator **Moynihan**. Thank you.

Senator **Roth**. Ambassador Brock, I mentioned earlier the working relationship between the National Governors Association and you. I said I am concerned over how we maintain the Federal Government's ability to provide a coherent, consistent policy in trade, while not, at the same time, undermine or cut down, directly or indirectly, the authority of the States in many of these services areas.

I think it is very important to solve this question we are to get significant progress in services trade discussions at home and abroad. I wonder if you would care to comment on how we should handle Federal-State interaction in our legislation? We of course required you to consult in the process of negotiation, but it can be argued that that is somewhat one-sided. You could still consult and then go on your merry way.

Do you care to comment on this?

Ambassador **Brock**. I think the general approach in your bill, Senator, is a fundamentally sound way to proceed. We have absolutely sovereign constitutional rights allocated to the States in this country, and I think it is fair to state that this administration would be the last administration to attempt to impinge upon those rights. We feel very strongly about it. The President's new federalism, all the things we are trying to do are to try to further strengthen the Federal system and in no way to weaken it.

When a State has a regulatory authority that is unique to the State, I think that is an appropriate exercise of their constitutional prerogative. All we ask is that in the exercise of that right they do so for the purpose of domestic, inside the State exercise of the right for the regulatory purpose described.

In other words, if they are going to regulate an insurance company in its activities within the State, they should do so on the basis that they are trying to regulate all insurance companies in that State in the same fashion, not in a way to deprive insurance companies from other countries or even other States from having an equivalent competitive ability. The law is very specific in that regard.

One of the reasons we are so blessed in this country is we are in the world's greatest common market for 200 years. The Constitution absolutely prohibits the imposition of trade barriers among the sovereign States, and it has been one of the great things that has contributed to our economic well being. Let us keep that very clear.

What we are asking internationally for our companies overseas is the right of national treatment and transparency, which is, if you are going to treat your companies in a certain way, treat ours a certain way. That is all. We know you are going to have to regulate in some of these fields, just as we do, but do not regulate in a fashion to discriminate between foreign and domestic firms.

That is what we seek in terms of our domestic law, and that goes to Senator Chafee's point about whether or not our hands are clean. If we treat these foreign countries just as we treat our own, then there can be no charge of discrimination. That is what constitutes a trade barrier, and as long as we are absolutely open and aboveboard and transparent, as long as we accord to them the same rights our own companies have, we are not going to have a problem.

So what we need, then, is the consultative process between the U.S. Government and the States to be sure that actions are not taken in the States that constitute trade policy, but rather are limited to regulatory policy that is entirely within the purview of the States. And I think we can develop the kind of cooperative relationship that would work positively in that regard.

Senator **Roth**. Throughout your testimony you talked about service negotiations down the road. Would you be able to give us some kind of timetable as to when you think it might be reasonable to begin such negotiation? Are you talking about several years in the future, or, do you think you would begin, say, next year?

Ambassador **Brock**. What is reasonable for the United States probably is not reasonable for other countries. We have done a good deal of work on this subject. We are well along the path of analysis to determine what might or might not be a productive exercise. Others in many cases have only begun, and some have not begun at all.

The reason why we have asked for the GATT to coordinate the work program is that that will bring all countries into the process of doing the analysis. For myself, I think it would be possible to establish certain basic principles that cover all services—transparency, national treatment, things of that sort—in a period of a couple of years.

Now, the problem we are going to get into, Senator, is that there are an enormous range of different service industries and an enormous complexity to the different issues that each of us faces. So the difference between international regulation of shipping and State regulation of insurance I think indicates the breadth of that kind of complexity.

It may be that within 3 years, I think at the outside 4, we could do not just the general principle work but the bilateral sectoral analysis—not bilateral, just the sectoral analysis—that would be adequate to begin serious negotiations. But I think 4 years, for me at least, would be the outside. I would hope that we could do it a little sooner than that. But it will not come in 1 year. I do not think that is realistic.

Senator **Roth**. Mr. Ambassador, time is passing. I share your general thoughts in this matter. I think it is important that prior to negotiations we have done the homework necessary. And it is a complex area, you are absolutely right. The diversity of industry within the services sectors makes it critically important that we lay a firm foundation.

I want to thank you for being here today. And I know that the subcommittee and the Finance Committee as a whole look forward to working with you in drafting legislation in this most important area.

Ambassador **Brock**. I thank you for your leadership. It is important to us. I appreciate it. Thank you very much.

Senator **Roth**. Without objection, we will include in the record the comments by Senators Dole, Bentsen, Mitchell, and Gorton.

[The prepared statements of Senators Dole, Bentsen, Mitchell, and Gorton follow:]

STATEMENT OF SENATOR DOLE

Mr. Chairman, I am happy to join you today as the committee once again addresses trade in services. The subject is not new, of course—just within the last year, the Subcommittee on International Trade several times received testimony on the subject. I well recall Ambassador Brock's remarks during our trade policy hearings last summer that services must be on the forefront of this decade's trade agenda. Many witnesses joined him to voice a similar refrain in our more recent hearings on next autumn's meetings of GATT Ministers and on the reciprocity bills. The committee adopted just Tuesday a resolution on the GATT Ministerial, introduced by Senators Danforth and Bentsen and co-sponsored by myself and others, that calls for a GATT work program on services. I expect today's hearing to broaden our knowledge on these complex issues as we seek a means of translating this interest into results.

LONG-TIME COMMITTEE INTEREST

It is important to recognize that this committee's interest in developing U.S. services trade is long-established. In the 1974 Trade Act we included services within both the negotiating authorities and remedial provisions of section 301, which addresses unfair trade practices.

The provision of such authority was not without purpose. The Congress then was fully cognizant of the transformation taking place in the American economy. Excluding Government participation, services as a percent of the gross national product climbed from 31.7 percent in 1949 to 44.4 percent in 1974, according to Department of Commerce figures. Within the services industries, employment in producer service sectors, such as insurance and finance, increased significantly compared to other sectors. I note this because one would expect such services to be the most exportable. But while the volume of services trade substantially increased in recent years, it pales in comparison to the quantum leap in merchandise trade. I believe that in 1974 the Congress recognized this lag could be attributed in part to foreign barriers to U.S. service exports. It therefore included appropriate negotiating and remedial authorities in the 1974 Act.

Unfortunately, despite this prescience the Tokyo round of negotiations ended without significant steps having been taken to achieve a regime of international rules governing services trade. In 1979 Congress renewed the nontariff barrier negotiating authority contained in section 102 of the act. While it permits negotiations intended to reduce or to eliminate barriers to services trade, perhaps more explicit legislative authority is required. I am interested in hearing Ambassador Brock's remarks in this regard.

RESPECT FOR SERVICES REGULATORY AUTHORITY OF THE STATES

One difficulty in negotiating an international agreement on services in the inevitable impact—if the agreement is meaningfully broad—it would have on certain sectors traditionally regulated by the States, such as insurance, and many professional services. S. 2058 wisely calls for consultations with State governments to coordinate U.S. efforts, but I hope to hear testimony today whether this consultative mechanism is sufficient to safeguard States' interests. A similar problem was overcome successfully in the Tokyo round with regard to the standards code; I hope that experience can be repeated in more complex and sweeping services negotiations.

REMEDIES FOR UNFAIR SERVICES TRADE PRACTICES

S. 2058 proposes further refinements to section 301 to clarify its application to services. It further proposes that independent regulatory agencies should account for foreign unfair services trade practices on a reciprocal basis.

I recall that 1 year ago Ambassador Brock announced a comprehensive work program on services trade. One part of that program was to be a review of U.S. laws to ensure that adequate legal tools were available to achieve reciprocity in services trade. The suggestion then seemed to be that the United States would take aggressive action domestically to preserve and enhance our international position. I hope that Ambassador Brock and the other witnesses today will address themselves to the adequacy of domestic law to achieve reciprocity in services trade, and whether S. 2058, or other bills offered by our members, would be improvements.

I also hope to receive comments concerning S. 2058's assignment to independent agencies of an important role in developing and administering U.S. services trade policy. I understand that, as a practical matter, in many cases these agencies alone have the leverage over access to our markets that is meaningful to another country unfairly interfering with U.S. services exports. Nevertheless, I am troubled by the potential danger to a coordinated U.S. Government trade policy that is threatened by such an abandonment of presidential control.

S. 2051 AND CANADIAN SERVICES TRADE

S. 2051 potentially demonstrates the efficacy of U.S. remedial tools. This bill represents the results of the only section 301 proceeding carried to full term; perhaps this fact alone reflects the need to bring unfair services barriers under international rules with the associated disputes settlement provisions.

The Canadian punishment of taxpayers who use U.S. advertising media, like other recent Canadian restrictions on U.S. trade and investment, discloses a foolish and counterproductive xenophobia. It plainly is protectionist, and serves as an example of what a comprehensive services trade agreement might prevent. I understand why the past and present administration recommended the "mirror" restriction embodied in S. 2051 as a response to Canadian law. But I question whether it is sufficient to demonstrate to Canada that protectionism can be a two-way street. Can—or should—more be done to induce Canada to return to serious consultations with an aim of opening—rather than restricting—our immense trade? I hope our witnesses today will provide an answer.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR BENTSEN

Mr. Chairman: As a cosponsor of S. 2051, I would like to commend you for holding this hearing and moving toward prompt consideration of the bill. I joined in sponsoring S. 2051 because this legislation proposal is the result of a Section 301 finding that a Canadian tax law constitutes an unfair restriction on the export of U.S. broadcasting services.

The broadcasters, led by my good friend, Mitchell Wolfson, have exhibited admirable patience and fortitude in relying on the Section 301 process to break through a significant and reprehensible trade barrier. Since the American export affected is a service, not a product, the GATT is inapplicable. As a result, the path to resolving this problem is through bilateral negotiations. To make the 301 process work in this case, it has become obvious to me that Congress must buttress the negotiating leverage of our government. That is why I support effective legislation within the scope of the mirror concept proposed by both President Carter and President Reagan.

Unless we can demonstrate that the 301 process can solve tough problems—even if the stakes are relatively minor—no businessman in his right mind will start a 301 case. In this regard, I find the appearance of Ambassador Brock at this hearing to be a very positive sign that he truly is committed to making Section 301 work.

STATEMENT OF SENATOR GEORGE J. MITCHELL

Mr. Chairman, the subject of today's hearing, the Canadian border broadcast dispute, provides another example of Canadian intransigence in refusing to negotiate on bilaterial trade issues. In 1976, Canada unilaterally imposed what amounts to a nearly 100 percent tariff on the sale of advertising by U.S. television and radio broadcasters. Canada refused to even acknowledge the underlying issue: just compensation for services provided.

U.S. television stations such as WABI-TV, WVII-TV, and WLBZ-TV in Bangor and WAGM-TV in Presque Isle are widely viewed in the Maritime Provinces of Canada via cable systems. These services include entertainment and information services, additional commercial availability to Canadian advertisers, and a programming service to Canadian cable systems. These are services with undeniable value in the international marketplace. Yet the Canadian tax law prevents our broadcasters from being justly compensated.

The situation involving radio stations provides an even more compelling illustration of just how misguided and unfair this Canadian trade barrier is. Calais, Maine and St. Stephens, New Brunswick, are separated only by a narrow river. Commercially, they are virtually one city. The only radio station in the area, WQDY, broadcasts from Calais. Canadian businesses have no choice if they want to advertise on radio. Radio waves know no national boundaries; they don't even stop for customs agents. Yet the Canadian tax code not only tries to defy nature, but also interferes with the ability of business people to choose the most efficient means to achieve their advertising objectives.

It is no surprise that President Carter found, and President Reagan reiterated, that this Canadian trade barrier violates Section 301. I joined in sponsoring S. 2051 so that we can back up the Presidential finding with action strong enough to compel Canada to repeal this offensive tax law.

It is difficult for an industry, especially smaller businesses, to pursue a Section 301 complaint. I commend the broadcasters for persevering through a lengthy, and no doubt expensive process. Clearly, the President pronouncements and this Committee's prompt consideration of President Reagan's proposed response confirms the merits of their case. We are obliged to vindicate their decision to use Section 301 to obtain relief from a unilateral barrier to the export of services.

By enacting effective legislation—which probably means something stronger than the present bill—we can test and, I think, demonstrate the efficacy of using Section 301 to obtain reciprocal foreign market access.

I urge the chairman and all committee members to support prompt passage of legislation that will finally move the Canadian government on this issue.

Statement of Senator Slade Gorton

Mr. Chairman and Members of the Subcommittee: S. 2051 amends the Internal Revenue Code to mirror the Canadian tax law (C-58) which denies an income tax deduction in Canada for the cost of foreign broadcast advertising directed primarily at the Canadian market.

The Canadian tax law which this legislation is designed to parallel is a matter of serious concern to American border broadcasters. During the six years since the enactment of C-58, border broadcast stations have lost millions of dollars in advertising revenues, which translates into a significant loss of jobs for Americans.

Among the witnesses the Subcommittee will hear from today is Frank Jank, the General Manager of KVOS Television in Bellingham, Washington. Mr. Jank will tell the Subcommittee what the law has meant to his business. I find his situation particularly enlightening about the effect of the Canadian tax law.

Our nation has had a longstanding trading relationship in goods and services with Canada. The Canadian tax law in question only leads to tensions in this mutually beneficial trading relationship. I believe that favorable action on S. 2051 will send a strong message to the Canadian government and to our other trading partners that we will not tolerate trade practices that prevent American businesses from competing in the world marketplace.

In closing, I wish to thank Senator Danforth for his sincere interest in and attention to the problem addressed by S. 2051. I also agree with his assessment that by enacting effective legislation, which probably means something stronger than the present bill, we can resolve this lingering problem.

Senator ROTH. At this time I would like to call forward Mr. Maurice Greenberg, chairman and chief executive officer, Coalition of Services Industries, American International Group, New York, accompanied by Peter J. Finnerty, vice president, Sea-Land Industries Investment, Inc., Edison, N.J., and Richard R. Rivers, an old friend of this committee who now is a member of Akin, Gump, Strauss, Hauer & Feld.

Gentlemen, as always, our time constraints are serious, so that we would welcome your summarizing your statement. And of course, we will include each of them as if read.

STATEMENT OF MAURICE GREENBERG, CHAIRMAN, COALITION OF SERVICES INDUSTRIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN INTERNATIONAL GROUP, ACCOMPANIED BY PETER J. FINNERTY, VICE PRESIDENT, SEA-LAND INDUSTRIES INVESTMENT, INC., AND RICHARD R. RIVERS, AKIN, GUMP, STRAUSS, HAUER & FELD

Mr. GREENBERG. Thank you. Good morning, Mr. Chairman, Senator Chafee.

I am M. R. Greenberg, chairman of the board of the newly formed Coalition of Service Industries, Inc., the first and only national organization exclusively representing the service sector of our economy, with member companies drawn from a wide range of service industries, including banking, insurance communications, shipping and construction. I am also president and chief executive officer of American International Group, a multinational company with diverse insurance interests.

It is an honor for me and my colleagues to appear here today. Mr. Chairman, passage of this legislation, S. 2058, the Trade in Services Act of 1982, is of utmost importance. Approximately 70 percent of the U.S. work force is now employed in the service—that is, non-goods-producing sector. Approximately 65 percent of our GNP results from service industry revenues. And while headlines once again decry our trade deficit in goods, in the service sector we have been consistently running a trade surplus, estimated at nearly $40 billion last year.

The Trade in Services Act of 1982 would accomplish several critical objectives of high priority to the service sector. First, it would serve notice to our trading partners that the Congress of the United States has thrown its full weight behind the America service sector and the efforts of the executive branch in the international arena to bring services under the same liberal trading framework as goods.

Secondly and more specifically, S. 2058 will supplement the President's negotiating authority with a clear mandate from Congress including specific negotiating objectives for services.

A third reason for the coalition's strong support of this bill, and a reason which is closely related to the above longer term objectives, is the impact which passage of this legislation will have on the GATT Ministerial to be held in Geneva this November.

A fourth reason, Mr. Chairman, for the coalition's support of this bill is its provision making it crystal clear that section 301, the unfair trade practices provision of the Trade Act of 1974, covers services, including overseas investments necessary for the export and sale of services.

The coalition also supports section 5 of the bill, placing the U.S. Trade Representative's Office in the central role of coordinator of U.S. trade policy in services. Such a central coordinating body is essential to coherent implementation of a service trade policy, and the USTR has demonstrated its skill and activist attitude in this area.

S. 2058 contains one provision, section 6, about which the coalition has some concern. This section would require independent regulatory agencies such as the Federal Communications Commission or the Interstate Commerce Commission to "take into account the extent to which U.S. suppliers are accorded access" to a foreign market in a service sector when such independent agencies are developing policies for access of those foreign suppliers to the U.S. market in the same service sector.

While it is not clear what "taking into account" would involve, the coalition would not wish to see this language resulting in the regulatory agencies independently making trade policy judgments in the service sector. This role, as we have said, should be centralized and coordinated with the U.S. Trade Representative's Office, and indeed section 5(b) of this bill would require the independent agencies to consult with the USTR where U.S. service industries raise with those agencies foreign service access issues. This latter provision is sufficient, we believe, and we urge that the subcommittee consider deleting section 6 altogether.

Mr. Chairman, this is a summary of our prepared statement, which I hope will be introduced into the record. I would also like to really support Ambassador Brock's remarks. We think he was very clear on the subject. And the coalition, we want to commend your subcommittee for its leadership in this area.

Thank you.

[The prepared statements of Mr. Greenberg and Peter J. Finnerty follow:]

Testimony of Maurice R. Greenberg Chairman, Coalition of Service Industries, Inc., Before the Senate Finance Trade Subcommittee, Concerning S. 2058, the "Trade in Services Act of 1982"

Good morning, Mr. Chairman.

I am Maurice R. Greenberg, Chairman of the Board of the newly-formed Coalition of Service Industries, Inc., the first and only national organization representing the service sector of our economy, with member companies drawn from a wide range of service industries including, banking, insurance, communications, shipping and construction. I am also President and Chief Executive Officer of American International Group, a multinational company with diverse insurance interests. It is an honor to appear before you today on behalf of the Coalition. Also appearing with me this morning are Peter Finnerty, Vice President of Sea-Land Industries Investment, Inc., a member of the Coalition, and Richard Rivers, of the law firm of Akin, Gump, Strauss, Hauer and Feld, our counsel.

Mr. Chairman, passage of this legislation, S. 2058, the "Trade in Services Act of 1982," is of utmost importance. Let me reiterate what you and the members of your Subcommittee know well, but what the American public may not know: the importance of the service sector to our economy. Approximately seventy percent of the U.S. workforce is now employed in the service, i.e., non-goods-producing, sector. Approximately sixty-five percent of our GNP results from service industry revenues.

And, while headlines once again decry our trade deficit in goods, in the service sector we have been consistently running a trade surplus, estimated at nearly $40 billion last year. In short, Mr. Chairman, while many of our beleaguered goods-producing industries have for years been grabbing both media attention and Washington aid, the service sector has silently surged ahead, in big firms and small, here and in offices abroad, to play an ever-growing role in our economy and in our daily lives. It is time the economic importance of services be recognized and that services be placed on an equal footing with goods under the laws of this nation. In the international trade area S. 2058 is a strong step in that direction and a step which, with the reservation expressed below, the Coalition is here today heartily to support.

The Trade in Services Act of 1982 would accomplish several critical objectives of high priority to the service sector. First, it would serve notice to our trading partners that the Congress of the United States has thrown its full weight behind the American service sector and the efforts of the Executive Branch in the international arena to bring services under the same liberal trading framework as goods. These efforts, which have begun in the Organization of Economic Cooperation and Development ("OECD"), must move aggressively forward in the General Agreement on Tariffs and Trade ("GATT") and other fora.

Without such combined momentum, which passage of S. 2058 would provide, our trading partners will cease to take seriously the need for maintaining and improving a liberal world exchange in the service sector. Non-tariff barriers abroad, whether they be in the insurance sector with which I am familiar or in the many other service areas which our Coalition represents, will continue to proliferate as nations seek to protect infant industries in, for example, highly technological areas such as data-processing, or in established sectors where industries have become accustomed to monopolistic or quasi-monopolistic status in their respective countries. A sampling of service non-tariff barriers reported to the U.S. Trade Representative is appended to my statement. Visible political support in the form both of these hearings today and passage of this legislation will signal to our trading partners the high priority which the U.S. attaches to the service sector and the liberalization of such barriers.

Secondly and more specifically, S. 2058 will supplement the President's negotiating authority with a clear mandate from Congress including specific negotiating objectives for services. Armed with this authority, the President's negotiators at the U.S. Trade Representative's Office will be able to attack and chip away at foreign barriers to services, including the fundamental right to establish and operate service industries abroad. These negotiations may take place on either a bilateral or multilateral basis. In the latter context, S. 2058 will authorize the President to begin to develop internationally agreed rules, including dispute settlement procedures, in the service sector. Such rules no doubt will be developed in the context of the GATT. While negotiations to develop multilateral rules on services will be a long and arduous process, as they were in the case of developing internationally agreed rules for trade in goods, that process nevertheless must at last commence. In addition, this bill will bring under the "fast-track" congressional approval provision of Section 151 of the Trade Act any service trade agreements the President may conclude. The Section 151 fast-track provision proved its value well in the Tokyo Round of multilateral trade negotiations.

A third reason for the Coalition's strong support of this bill, and a reason which is closely related to the above longer term objectives, is the impact which passage of this legislation will have on the GATT Ministerial to be held in Geneva this November. This Ministerial is the first since that held prior to the opening of the Tokyo Round nearly a decade ago. It is a once-in-a-decade opportunity to herald the importance of the service sector and the need for the GATT earnestly to begin a work program in this area. We strongly support the Administration's efforts to place services at the front of the GATT Ministerial agenda and commend your Subcommittee's hearings on this topic earlier this spring.

A fourth reason, Mr. Chairman, for the Coalition's support of this bill is its provision making it crystal clear that Section 301, the unfair trade practices provision of the Trade Act of 1974, covers services, including overseas investments necessary for the export and sale of services. My company, American International Group, effectively used Section 301 to gain improved access to the Korean marine and fire insurance market, but only after overcoming doubt within the U.S. Government that our case, because of the small investment necessary to maintain an insurance office within Korea, was a sufficiently "pure" trade in services case to be covered by Section 301. S. 2058 will erase any doubt on this point, which could arise in future Section 301 cases. Let me add at this point that the Coalition urges continued strong administration of this important provision of our unfair trade laws and hopes that Section 301 may in the future be used as effectively or even more effectively in the service sector.

The Coalition also supports Section 3 of the bill, placing the U.S. Trade Representative's Office in the central role of coordinator of U.S. trade policy in services. Such a central coordinating body is essential to coherent implementation of a service trade policy, and the USTR has demonstrated its skill and activist attitude in this area. At the same time the Coalition supports Section 5's grant of authority to the Commerce Department actively to promote service industry opportunities abroad and to improve service sector data collection and analysis. Our studies show that of the fifteen priority sectors to which eighty percent of the Commerce Department's export promotion funds are granted, not one of these is a service sector. Passage of S. 2058 would help remedy such discrimination in our export promotion policy. Our Coalition also attaches high priority to improvement of services data collection both domestically and internationally, a goal which this part of the bill will advance.

S. 2058 contains one provision, Section 6, about which the Coalition has some concern. This section would require independent regulatory agencies such as the Federal Communications Commission or the Interstate Commerce Commission to "take into account the extent to which United States suppliers are accorded access" to a foreign market in a service sector when such independent agencies are developing policies for access of those foreign suppliers to the U.S. market in the same service sector. While it is not clear what "taking into account" would involve, the Coalition would not wish to see this language resulting in the regulatory agencies independently making trade policy judgments in the service sector. This role, as we have said, should be centralized and coordinated with the U.S. Trade Representative's Office, and indeed Section 5(b) of this bill would require the independent agenices to consult with the USTR where U.S. service industries raise with those agencies foreign service access issues. This latter provision is sufficient, we believe, and we urge that the Subcommittee consider deleting Section 6 altogether.

Mr. Chairman, this concludes my remarks this morning on behalf of the Coalition of Service Industries, Inc. I would be pleased to answer any questions you may have.

Reported to the U.S. Trade Representative's Office

EXAMPLES OF FOREIGN DISCRIMINATION AGAINST SERVICE INDUSTRIES

Accounting:

Argentina - Requirement that local audits be supervised by locally registered and qualified accountants, and audits must be signed by them.

Brazil - Required that all accountants possess the requistic professional degree from a Brazilian University.

France - Pressures to require that French citizens own more than 50 percent of accounting firms.

Advertising:

Argentina, Australia, Canada - Radio and T.V. commercials produced outside of the country are forbidden.

Canada - Income Tax Act prevents expenditures for foreign broadcast media along with foreign publications from being treated as a business expense for tax purposes.

Air Transport:

France - French government has refused to allow foreign carriers to participate in the government sponsored Muller-Access Reservation system, while foreign participation in Air France Alpha III Reservation System is restricted to non-competitive rates.

Chile - National carriers are given preferential user (landing and other) rates, while foreign carriers are not. This places foreign companies at a competitive disadvantage.

Auto/Truck Rental & Leasing:

Mexico - U.S. trucks are required to reload at borders while Mexican trucks travel directly through.

Banking:

Australia - Policy since 1945 allows foreign banks only representative offices in Australia. Foreign equity participation in commercial banks limited to less than 10%.

Nigeria - Local incorporation of existing and new branches mandatory.

Venezuela - 1975 General Banking Law. Foreign banks new to Venezuela are limited to representative offices. Already established banks forced to reduce their equity participation to 20%.

Franchising:

Japan - Foreign franchisors are not allowed to restrict franchise from handling competitive products.

Hotel & Motel:

Switzerland - Work permits for foreign employees are difficult to obtain, extend or renew.

Maritime Transportation:

Total percent of U.S. commerce shipped on domestic bottoms has fallen from 11% in 1960 to less than 5% in 1980. This is due to a variety of problems, including foreign barriers. Lack of coordinated U.S. policy is equally detrimental to U.S. shipping interests.

Modelling:

Germany - Requires all models be hired only through German agencies.

Motion Pictures:

Egypt - Imports made through state owned commercial companies. No foreign films may be shown if Egyptian films are available.

France - Restrictions placed on the earnings of foreign films.

Tele-Communications, Data Processing and Information Services:

Brazil - International links for teleprocessing systems are subject to approval by the government. The principle criteria used in evaluating requests for data links:

1) protection of Brazilian labor market

2) protection of operations of national firms and organizations

All data links approved are reviewed for renewal.

Germany - International leased lines prohibited from being connected to German public networks unless the connection is made via a computer in Germany which carries out at least some processing.

International leased lines available only if it is guaranteed that they are not used to transmit unprocessed data to foreign telecommunications networks.

Spain - 57% import duty on equipment available locally.

COMMENTS BY PETER J. FINNERTY,
VICE PRESIDENT, PUBLIC AFFAIRS
SEA-LAND INDUSTRIES, INC.
ACCOMPANYING WITNESSES FROM THE COALITION OF
SERVICE INDUSTRIES ON S.2058 MAY 14, 1982.
BEFORE THE SENATE SUBCOMMITTEE ON TRADE OF
THE SENATE FINANCE COMMITTEE

Ocean shipping is an important international service industry vital to America's national defense and international trade position. Sea-Land Service, Inc. is the world's largest container shipping company and operates 40 United States-flag containerships without benefit of federal maritime subsidy. We also operate 20 smaller foreign-flag feeder ships and have substantial added investment in 81,000 containers and 46,000 chassis. Sea-Land provides regular service between over 120 ports, in 50 countries and territories. In 1981, Sea-Land's gross revenues exceeded $1.6 billion.

Sea-Land is the largest of 9 major U.S.-flag liner shipping companies engaging in international commerce. In addition, numerous American companies operate hundreds of dry and liquid bulk ships in international commerce throughout the world. The collective activity represents billions of dollars per annum.

S.2058 is welcome legislation to strengthen U.S. government efforts on behalf of American service industries competing in the global economy. Approval of the bill is needed to overcome barriers to U.S. service industry market access abroad, growing foreign government intervention and a deterioration of services market shares due to deficiencies in U.S. policy.

Competitor nations discriminate and impose various unfair trade practices.

American marine insurance underwriters have compiled a list of thirty-nine countries that discriminate in that service alone. Japan and European countries announced last year that they intend to ratify a Code of Conduct for Liner Conferences developed under the auspices of UNCTAD in Geneva. The UNCTAD Liner Code, taken with other initiatives of the UNCTAD Secretariat, move worldwide liner shipping away from open market competition toward inefficient government economic control. It is expected that the UNCTAD Liner Code will enter into force later this year.

Many individual countries have taken steps to interfere in private sector shipping markets in advance of the Code through adoption and enforcement of rules which encourage, and give preference to, use of their national-flag vessels for transport of imports and exports.

In addition, private ownership of the means of international ocean commerce is disappearing. More and more governments are becoming owners and operators of liner fleets or direct investors in partnership with citizens of their countries. Such State Controlled carriers are not profit motivated and can offer unfair competition against private enterprise carriers.

S.2058 will provide significant clarification of U.S. Government authority to apply Section 301 when U.S. retaliation may be warranted. The Executive branch also needs clear authority to negotiate intergovernmental agreements for service industries, especially liner shipping. Intergovernmental liner shipping agreements are the only feasible U.S. counterproposal to the UNCTAD Liner Code. Unilateral attempts at governance of the international marketplace by other countries or the United States cannot maintain healthy and competitive conditions over the long term.

Passage of S.2058 will be of substantial benefit to U.S. ocean shipping and other U.S. service industries. Sea-Land respectfully urges the Subcommittee to approve the bill as soon as possible.

Senator ROTH. Thank you.

Mr. Rivers?

Mr. RIVERS. I have no statement.

Mr. FINNERTY. I would like to make a few short remarks, Senator. Ocean shipping, which is the industry that I represent in the coalition, is an important international service industry, vital to America's national defense and international trade position. S. 2058 is welcome legislation to strengthen U.S. Government efforts on behalf of American service industries competing in the global economy.

Approval of the bill we believe is needed to overcome barriers to U.S. service industry market access abroad, growing foreign government intervention, and the deterioration of service's market shares due to deficiencies in U.S. policy.

Japan and European countries announced last year that they intend to ratify a code of conduct for liner conferences developed under the auspices of UNCTAD in Geneva. The UNCTAD liner code, taken with other initiatives of the UNCTAD Secretariat, moved worldwide liner shipping way from open market competition toward inefficient and discriminatory government economic control. It is expected that the UNCTAD liner code will enter into force later this year.

Many individual countries have also taken steps to interfere in private sector shipping markets in advance of the code, through adoption and enforcement of rules which encourage or give preference to use of their national flag vessels for transport of imports and exports.

S. 2058 will provide significant clarification of U.S. Government authority to apply section 301 when U.S. retaliation may be warranted. The executive branch also needs clear authority to negotiate intergovernmental agreements for service industries, especially liner shipping. Intergovernmental liner shipping agreements are the only feasible U.S. counterproposal to the UNCTAD liner code.

Unilateral attempts at governance of the international marketplace by other countries or the United States cannot maintain healthy and competitive conditions over the long term. Passage of S. 2058 will be of substantial benefit to U.S. ocean shipping and other U.S. service industries, and Sea-Land respectfully urges the subcommittee to approve the bill as soon as possible.

Thank you.

Senator ROTH. I express my appreciation to both of you for your excellent statements. I would also like to express my appreciation for the leadership in the past you, for example, Mr. Greenberg and some of your associates have played in bringing this problem of trade in service industries front and center. I think it has been most helpful to us here.

One of the questions I would like to ask both of you gentlemen is: How much has your trade grown over the last 10 years, and will it continue to grow if we do not have GATT rules to insure open markets overseas? Mr. Greenberg?

Mr. GREENBERG. Well, our business has grown, Senator. How much more it would have grown and will grow in the future if some of the nontariff barriers to services are removed is difficult to say. I am certain that clearly, if there is a code of conduct which puts U.S. service industries in the same position as those companies in their home countries are treated, clearly U.S. service industries will gain from that action.

There have been nontariff barriers that all service industries have been confronted with, and what this legislation will do, it will simply accelerate the day when all countries will have a code of conduct which will benefit those countries as well as our own.

Senator ROTH. Mr. Finnerty?

Mr. FINNERTY. Senator, in the last 10 years Sea-Land has probably doubled in size, approximately. I think looking to the future, liner shipping and international shipping in general is a business that, unless we see something to protect healthy markets and market access and limit or eliminate foreign government intervention and confusion in the business, not only will the business not grow, it may substantially suffer from intrusions into these markets. So, we do desperately need the U.S. Government to act.

Senator ROTH. As you well know, there has been some reluctance on the part of the service industry to support legislation at this time. Do you think the chances are good that we can develop a stronger constituency in the private sector?

Mr. **Greenberg.** I think the coalition which I am here representing today is a good example of that support, Senator. The coalition is made up of a group of leading service industry companies in the United States, and I believe that its number will grow.

There is growing recognition, finally, that service industry matters must be faced up to, just as we have for goods and trade. It really is puzzling why it has taken so long to focus on this issue.

Senator **Roth.** I agree with you, in view of its importance.

Mr. Finnerty?

Mr. **Finnerty.** I think Mr. Greenberg's statement is adequate, Senator. There is a strong need for it and there is a broad basis of support for the bill.

Senator **Roth.** My last question is addressed to you, Mr. Greenberg. I believe your company is one of the few service firms that has brought an unfair trade practice complaint under section 301 of the Trade Act. Did the U.S. Trade Representative resolve that case to your satisfaction? And why do you believe so few firms have registered complaints under section 301?

Mr. **Greenberg.** We did bring a 301 action against the Korean Government for failure to permit one of our companies to be licensed in their country and do business in the indigenous market. For years we had been doing business, but only in U.S. dollars for the U.S. military, U.S. military personnel stationed there.

The procedure was long and tenuous, but nonetheless that procedure had the effect of bringing about a successful resolution to the issue. Had there not been a 301 recourse, I doubt that we would have been successful in gaining access to the market. So 301 was a very needed tool to be employed.

Why other service companies have not resorted to that, I really cannot answer that question. I would hope that, as this current bill—if this current bill is passed, it will clarify for them once and for all that such a recourse is available, and it will solve many problems long before they have to make use of it.

Senator **Roth.** Senator Chafee?

Senator **Chafee.** Thank you, Mr. Chairman.

Mr. Greenberg, I think it is splendid that you put together this coalition, and it will be helpful. And your testimony was very good, in my judgment, particularly the appendix that you had attached giving examples of discrimination against service industries through a whole series of different countries.

My question to you and your fellow panel members is, Has your group reached any consensus on what they would like to see an international agreement? In other words, would you like to see the coverage of services in GATT expanded, or would you like to see a series of general multilateral and/or bilateral services agreements with specific codes of conduct covering specific service industries such as banking or insurance?

Mr. **Greenberg.** I would prefer to see it in GATT, Senator, where service industries can be negotiated, would have the same treatment in various countries throughout the world that their own companies have. We seek no—we do not seek any advantages, simply the same treatment that a company would have that was a company of that country, just as we seek to treat foreign companies in the service industries the same way in our own country.

I think that will be the simplest way of achieving this. The GATT does provide the right mechanism for it.

Senator CHAFEE. Mr. Rivers, do you agree?

Mr. RIVERS. I agree entirely, Senator. There is a great deal of preparatory work that has to be done before any negotiation this ambitious. But I think national treatment is one of the principles that is already in the GATT with respect to goods, which may very well be applicable to trade and services.

Senator CHAFEE. Mr. Finnerty?

Mr. FINNERTY. Senator Chafee, I would basically agree with the point made, that GATT is the proper organization in the context of international trade to take up this broad set of issues. I would simply add that in one industry in particular, that of liner shipping, I do not know that we have the luxury of the number of years that it will take to prepare for a full-blown GATT negotiation.

As I indicated in my short comments, we are confronted within our business with the impending entry into force of an international regime prepared in UNCTAD which would be literally an opposite direction to what GATT stands for. And in that context, I think in one or more of the industries it might be important for the Government to pursue bilateral negotiations or multilateral discussions with countries willing to sit down and take on these problems at an earlier date.

In our business, because of its unique nature of operating between countries rather than within countries, we are perhaps more advanced than most of the other service industries in getting ready to come to the bargaining table, having our information prepared, as are other countries. And indeed, I think it has been the United States that has been dragging its feet about confronting this issue.

I understand that the administration may include this question in its review of promotional maritime policy in the next month or two.

Senator CHAFEE. It seems to me, Mr. Greenberg, there is a problem going to come up here, in that if we only ask the other countries to permit us to do what they permit their own companies to do, it seems to me it may well end up an unequal struggle, in that we are such an open society insofar as competition goes. For instance, banking. Many, many nations have very, very tightly controlled State banks. The opportunities for a new bank to open are extremely limited, whereas a company, a foreign nation, citizens of a foreign nation, can very easily come here, buy a bank with its branches with it and everything and they are in business.

Now, you are just prepared to accept that as one of the facts of life, I suppose?

Mr. GREENBERG. I think we have to. I think what we seek is access to the market. If there is no access permitted by any company, if there is only one, for example, a bank and it is a state-controlled and owned bank and there are no private banks in that particular country, then what we would be asking them to do otherwise is to change their own law within their country to permit private banking where none now exists. It seems to me that now goes beyond what we are seeking.

What we seek is access, that access which is permitted to anyone.

Senator **Chafee**. On an equal basis?

Mr. **Greenberg**. That is right.

Senator **Chafee**. But on many of the cases, that will not be there. You are very familiar with the insurance business, and in many countries it is a pretty tightly controlled organization, with the Government in many instances running it or apparently running it, is that not so?

Mr. **Greenberg**. Yes, certainly, in Eastern European countries. But even there, there are possibilities.

But where a country does permit insurance to operate in the private sector, then we seek equal access. I was in Romania last week, and it is strange that even there they are aware of this type of legislation pending and wondered if it passed and it became a GATT item, whether that would require them to open their market to foreign insurance companies, for example, which I think—the issue you are raising, I think that would go against some of their basic precepts.

Senator **Chafee**. Fine, thank you. And thank you, Mr. Chairman.

Senator **Roth**. Thank you.

Gentlemen, we appreciate your being here. We look forward to working with you, and we hope that your coalition will continue to grow.

Mr. **Greenberg**. Thank you for the opportunity.

Senator **Roth**. Our next panel consists of: Mr. Harry Greeman, who is senior vice president of the American Express Co.; Mr. Duane Kullberg, managing partner and chief executive officer of Arthur Andersen; our old friend and trade expert, Mr. Michael Samuels, vice president—international, U.S. Chamber of Commerce.

Mr. Kullberg, we ask you to lead off. Again, because of the time constraints, we would request that you summarize your statements. Your full prepared statement will be included in the record as if read.

STATEMENT OF DUANE E. KULLBERG, MANAGING PARTNER AND CHIEF EXECUTIVE OFFICER, ARTHUR ANDERSEN & CO., ACCOMPANIED BY ROBERT WRIGHT, PARTNER

Mr. **Kullberg**. Mr. Chairman, thank you very much for the opportunity of appearing before these committees. My name is Duane Kullberg. I am managing partner and chief executive officer of Arthur Andersen. With me to my right this morning is Robert Wright, who is an experienced partner in our New York office and has been heavily involved with a number of clients in the service area.

As indicated in our statement, our organization conducts an accounting practice involving service to clients in many parts of the world. We have seen the tremendous growth in the worldwide need for competent services, not only the types provided by our organization but those that are provided by many other companies in a wide range of areas.

We are very pleased that your committees are considering legislation that emphasizes the importance of the service sector of the

United States in international trade, and we commend you and Senator Chafee for your sponsorship of this bill.

The statistics that are cited in S. 2058 demonstrate the magnitude of our service industry in world markets. In establishing appropriate trade policies for the service sector, as well as for other sectors involved in international trade, we think the guiding concepts should be neutrality and free trade insofar as possible. Artificial barriers to trade, whether imposed by foreign governments or the United States, run counter to that concept and should be kept at a minimum or be eliminated entirely.

In conducting our professional accounting practice in many countries, we have experienced over the years a number of restrictions on foreign nationals practicing in other countries. This has applied not only in certain foreign countries, but has also been prevalent in the United States, where some professional societies and other bodies governing professional practice have imposed significant restrictions on citizens of other countries practicing in the United States. Fortunately, most of the problems have been resolved and for the most part those that remain are based on legitimate local and national concerns.

In other areas of international trade for services, however, many problems do remain. Clearly, some countries discriminate against companies or citizens from other countries providing services within their borders. Sometimes this is done by subtle and indirect means.

If legislation like S. 2058 is enacted, we would hope that this would place the U.S. trade negotiators in a stronger position to try to eliminate or minimize the restrictions that do remain.

A particularly troublesome area is emerging in some countries. This involves restrictions on transfers of business data from one country to another. With modern information accumulation, transmission, analytical techniques that are essential in managing multinational business operations, such restrictions can create serious problems for many business entities.

In carrying out the objectives of legislation like S. 2058, we hope the U.S. trade negotiators will focus on problems created by improper cross-border data flow restrictions.

In the final analysis, the service industry by definition is intended to serve the public. The interest of that public should control the types of policies that should be adopted in regulating international trade in service activities. The public is entitled, in our view, to receive competent services, whether they are provided by nationals of a particular country or from another country.

Again, we applaud your committees in taking a leadership role in recognizing the importance of the service sector in U.S. international trade, and we hope that Congress will act quickly on this legislation so that we can move forward in international trade negotiations.

We appreciate the opportunity to present our views on this legislation, and we would be pleased to answer any questions.

[The prepared statement of Mr. Kullberg follows:]

STATEMENT OF DUANE R. KULLBERG OF ARTHUR ANDERSEN & CO.

My name is Duane R. Kullberg, and I am Managing Partner - Chief Executive Officer for Arthur Andersen & Co. We welcome the opportunity to testify before these committees today on the subject of trade in services.

Introduction

Arthur Andersen & Co. is an international accounting firm with offices in about 150 cities around the world. Roughly one-third of our practice is conducted in foreign countries and about one third of our personnel are foreign nationals with professional credentials appropriate to those countries.

While we have many clients that would be affected by Senate Bill 2058, we do not represent them in this testimony. The views expressed are those of our firm, based on our experience in providing professional services to clients in all parts of the world for many years.

In performing those services, we have observed first-hand restrictions on the providers of services in many countries, including the United States. The fundamental principle that should guide the policies of all countries with respect to trade in services is the public interest. Artificial barriers to providing such services do not seem to us consistent with the public interest, and all countries should work toward their elimination.

We have reviewed S. 2058, the legislation which proposes to encourage multilateral trade negotiations in the service sector and to expand and clarify United States trade laws as they pertain to service industries. We are pleased that your committees are focusing their attention on the necessity for free trade in the service sector. As noted above, we agree that there is a need to foster trade in services by eliminating the barriers surrounding service sector trade in world markets. We believe the proposed legislation would also enhance growth in the manufacturing, agricultural and labor sectors.

Importance of the Service Sector

Service sector trade in world markets is of paramount importance to the United States economy. Based upon the data cited in the proposed legislation, a healthy, competitive service sector plays a significant role in offsetting balance-of-payments deficits attributed to other sectors. This is highlighted by the contribution of the service sector to United States trade receipts. Additionally, the emphasis placed upon balance of payments by the United States' trading partners warrants legislation that recognizes the importance of the service sector. The proposed legislation is an appropriate vehicle to implant the significance of the service sector in the United States trade policy.

The priority accorded trade in services by this legislation, together with the magnitude of service sector revenues, can only lead to beneficial consequences for other sectors of the economy. Increased service sector trade in foreign markets will expand entrepreneurial opportunities in the manufacturing, agricultural and labor sectors, in addition to the support which it provides to multinational business.

Expanded opportunities arise, for example, through the need for capital expansion. Most services involve making available capital facilities. The marine transport, air transport, warehousing, and telecommunications industries are illustrated by this fact. These service industries are both capital and labor intensive and, accordingly, an increase in the service aspect would result in capital expansion and higher employment which would have a favorable effect upon the manufacturing and labor sectors.

Furthermore, additional opportunities arise through the need for direct nonservice sector input into the flow of commerce. The proposed legislation attempts to satisfy these needs in that it will enable the other sectors to expand and improve through the service sector. Some services require direct use of nonservice sector industries. For example, retailing, lodging and food services require the direct contributions of the agricultural, manufacturing and labor sectors for their economic survival. Consequently, the proposed legislation in this regard should have a favorable impact upon all sectors of the economy.

The foregoing illustrations support our belief that the proposed legislation is vital to the growth of both the service and nonservice trade economy.

Commercial Vitality of Service Sector

We concur with the attempt to recognize the commercial vitality of U.S. service sector trade in foreign markets. The proposed legislation properly directs public attention to the importance of the service industry to United States trade, an area that prior to this legislation has essentially been ignored in trade policy consideration.

We recognize the service sector's vital role in commerce. The service sector, in fact, has taken on a commercial life of its own and is not necessarily subsidiary to trade in merchandise. Commensurate with this commercial vitality is the development of wide-ranging demands which ultimately touch upon most facets of our economy.

For example, the moving of people between countries for business, pleasure and educational purposes has greatly stimulated a demand for transport and other related services. Demands for services also increase when United States multinationals draw their domestic suppliers into foreign markets.

In addition, the need for spontaneous global communication and data collection for decision-making has created demands on the electronic and telecommunications industries which touch upon all sectors of our economy. Politically induced expectations derived from governmental programs have created demands from the social services sector.

Similarly, the influx of the service sector into foreign markets generates higher levels of disposable personal income, both at home and abroad, to the ultimate benefits of all sectors.

These examples illustrate some of the more significant contributions based upon demands on the service sector. The proposed legislation assents to this and, hence, draws our full support.

Fostering Trade in Services

We applaud the amendment to the negotiating objectives of the Trade Act of 1974 to include as principal goals the reduction or elimination of barriers to trade in services, and the improvement and coordination of service sector trade issues between and among United States government organizations, state and local governments, and the private sector. Through effective communication of these objectives, the United States can faithfully negotiate trade-in-service contracts in both bilateral and multilateral contexts.

The statutory framework that is being developed to remedy present practices that deny service sector access to foreign markets, discriminate against United States service trade in foreign markets, create nontariff restrictions, and generate subsidies to local and governmental competition, is a key to this legislation.

The objective of trade policy relating to the services industry should be neutrality. Neither the U.S. nor other countries should enforce restrictions on access to each other's economies based on artificial and protective policies. Service industries, by definition, serve the public, and the ultimate objective should be to provide competent and ethical services to those who need them in all countries.

On the other hand, it would be fruitless to completely abandon the notions of protectionism in foreign trade in services. The United States, as well as its trading partners, must seek to protect its national security, domestic sovereignty, and cultural integrity. However, through open networks of communication and policy positions premised on negotiating objectives like those contained in the proposed legislation, the effects of protectionism can be mitigated and free trade in services secured.

Achievement of these goals is facilitated by the coordination mechanisms set out in the proposed legislation. The bill consolidates the coordination of service trade policy in the United States Trade Representative's office, and grants the Department of Commerce a broad mandate to improve its services data base. The bill further requires independent federal regulatory agencies to consider service trade as a factor in making their decisions.

Furthermore, state governments must be integrated into service trade considerations where the potential exists that the federal government may usurp an area that is otherwise within a state's province. These administrative mechanisms are desirable in improving and coordinating service sector trade issues between and among United States government agencies, state and local governments, and the private sector.

Development of U.S. Policy Awareness

We applaud the bill's lead in creating an impetus for collecting data on trade service operations. Presently, only limited data on trade service has been quantified. The proposed legislation takes a welcomed initiative in providing for the collection and analysis of service data as inputs for domestic policy forumulation and for international negotiations. This data collection and analysis within the U.S. government can be linked to initiatives within the international institutions to develop agreed upon measures for data. In this regard, a logical starting point will be to identify and analyze data already available to various government agencies. Additional data that may be needed should be carefully defined to avoid undue burdens on service entities asked to provide it.

We further applaud the bill's recognition of the need for the unrestricted transfer of information and use of data processing facilities in the conduct of multinational service industry activities. The proposed legislation arrives at a time when certain trading partners are contemplating the imposition of restrictive measures to regulate cross border data flows. Advances in information technology, free of restrictions, will revolutionize business activity worldwide, and offer great potential to all sectors of both U.S. and foreign economies.

We also approve of the bill's utility as a device to identify service trade issues as priority items on the agenda of the GATT ministerial meetings, as well as other international organizations such as the OECD. This legislation will support the United States' objective to work toward a framework agreement on liberal trade principles for services. Progress along these lines should lead to multilateral negotiations to develop codes for services.

Finally, as stated earlier, we note that the United States service sector anticipates increased competition in multinational markets, often with the support and encouragement of foreign governments. This support and encouragement may come about through forms of disguised protectionism. The legislation proposed is an effective measure to respond to increased and questionable competition from other countries.

Conclusion

The fundamental objective of U.S. trade policy in the service area, as well as in other major segments of our economy, should be free and unrestricted trade. The enactment of S. 2058 should increase recognition of the importance of the service sector to the United States' economic well-being.

S. 2058 should also encourage multilateral trade negotiations in the service sector and expand and clarify United States trade laws as they pertain to service industries, and provide for significant future benefits to all segments of our economy. The bill represents an effective legislative framework for trade service policy and our firm is pleased to support it. We praise the initiative taken by this Senate in recommending policy that encourages negotiation of international agreements aimed at eliminating present barriers surrounding service trade in world markets.

We appreciate the opportunity to submit our views on these matters, and urge favorable action by Congress on this legislation.

Senator ROTH. Thank you, Mr. Kullberg.

Mr. Freeman?

STATEMENT OF HARRY L. FREEMAN, SENIOR VICE PRESIDENT, AMERICAN EXPRESS CO., REPRESENTING THE U.S. COUNCIL FOR INTERNATIONAL BUSINESS

Mr. FREEMAN. Thank you, Mr. Chairman. My name is Harry Freeman from American Express Co., here testifying today on behalf of the U.S. Council for International Business, representing 250 American companies.

Let me say at the outset, first, we agree with the position of Ambassador Brock. We agree with the position stated by Mr. Greenberg of CSI. The American Express Co. is a member of the board of CSI. We favor fast moving ahead on S. 2058, which we endorse. And we also agree with the statement filed by the Business Roundtable yesterday with your committee.

So we are here to voice our strongest possible support for early movement of this legislation. In the not so distant past, it was a major event to see a news item about the service sector or invisible trade. Now I am happy to report that hardly a day goes by without the appearance of some kind of article or speech pertaining to the service sector.

This really does demonstrate the momentum that is building up, and this momentum is evidenced by a number of things. We see the legislation, whether it is the very fine bill, S. 1233 of Senators Inouye and Pressler, that passed the Senate, the sense of the Senate resolution on GATT that was being ordered out of the Senate, out of this committee, the other day, and a lot of other signs in the Congress and in the private sector, and in other governments—the United Kingdom, Germany, others, that are now finally coming around to saying the service sector is important to our world; let us start working at a regime to protect the freest possible movement of services in the way we have done with goods.

So these hearings today, and particularly the commendable work of Senators Roth and Chafee, demonstrate that services are beginning to be noticed. And we are very pleased to see that. And we do want to move forward on S. 2058.

With respect to the importance of services, I do not want to dwell on that. I think that has been adequately documented. I think there are a few points I want to make very briefly.

One question we frequently get at the American Express Co., addressed to me or addressed to my boss, Jimmy Robinson, our chairman, is—what is your problem? You are a company that is doing well—and I think we are doing well. Why are you so active in pushing this particular crusade.

I think the answer is very obvious to us, to the American Express Co., and increasingly obvious to our other colleagues in the American business community. We keep reading about the fascination and the criticism of American business being always concerned with today's bottom line, this month, this quarter, this year. And we are doing well, but we are also very, very concerned, concerned in the sense that Ambassador Brock said a few minutes ago.

We are very concerned about the deteriorating trade situation, the growth of nontariff trade barriers.

And we are convinced that the time to act on these future and growing problems is now, not after they are upon us. So we really do think ahead, and we need to address these problems right now.

So passage of the key elements of this bill is essential now. The current state of the trade environment is grim, to say the least. We do agree with the comments that have been made about section 6. There is no reason for me to expand on that.

We think the services are really the bright spot in the U.S. economic horizon and the trade area, but we also recognize the vital linkage of services with goods. I certainly agree with what Ambassador Brock said earlier. We found a slightly more strong quote. He said a few months ago:

> So it is insane to think that you can any longer continue trade in goods if you had total barriers to the services which facilitate the trade in these goods.

The last point is also important, and that is data. Data is really wanting in this area, both in the trade area and the domestic scene. We cannot really feel very comfortable running our businesses and seeing Government being run on inadequate data. So we very much support the data provisions as well as the other provisions.

Thank you very much.

[The prepared statement of Mr. Freeman follows:]

STATEMENT OF HARRY L. FREEMAN, SENIOR VICE PRESIDENT, AMERICAN EXPRESS CO.

Mr. Chairman and distinguished members. My name is Harry L. Freeman, Senior Vice-President of American Express Company. I am pleased to be here today to testify on behalf of the U.S. Council for International Business. The U.S. Council represents 250 U.S. companies, serving as the U.S. affiliate of the International Chamber of Commerce, the International Organization of Employees and the Business Advisory Committee to the OECD.

In the not so distant past, it was a major event to spot a news item containing a reference to so-called "invisible trade in invisible goods." Now I am happy to report hardly a day goes by without the appearance of an article or speech pertaining to the service sector. This demonstrates that the importance of the service sector is finally becoming part of the mindset of economists. These hearings today, and the commendable work of Senators Roth and Chafee on this Committee, demonstrate that services are beginning to be noticed. We are also very pleased to see that the Senate passed the Service Industries Development Act, S. 1233, and congratulate Senators Inouye and Pressler. However, we still have a long way to go before the service sector receives the recognition it deserves and requires. The first step is to push forward on passage of legislation following the principles of S. 2058.

Services play a vital role in both the domestic economy and international trade. This is no longer an issue. A few facts will be sufficient to demonstrate my point. Attached to the testimony are various charts which depict these figures.

At the outset we would like to note that in some ways the term "service sector" is a misnomer and does not do justice to the wide diversity of industries that are included in the area. Service companies range from transportation to financial services to communications, to name a few. It is important to keep this in mind in order to recognize the magnitude of the area we are discussing today and its importance to the U.S. economy.

- Services represent 67% of U.S. economic output -- 51% if government activities are excluded.
- Approximately 66 million people -- 72% of total employment of 72 million -- are employed by the service sector.
- Services are growing twice as fast as the manufacturing sector.
- There was a 20% increase in labor and capital productivity from 1967 to 1979, versus 10% in manufacturing.

On the international side the facts are just as impressive.

- o The U.S now has a comparative advantage in international trade in services.
- o U.S. businesses account for 20% of total world trade in services. Last year this contributed to the first overall surplus in the U.S balance of payments since 1976.
- o World trade in services expanded at 17% average annual rate in the past decade, compared with an average growth of 6 percent for world trade as a whole.

Why services legislation now?

There are some who would argue that services are doing so well on their own, they do not require government attention in the form of legislation or additional resources. But the truth is, we often behave as if the service sector doesn't exist; we look at our economy with only one eye -- the industrial eye -- when we should be using two. We need to open the services eye, so that we can see our economy in its entirety. I am not advocating that we should ignore or withdraw resources from manufacturing, agriculture or mining. What I am saying is that we should give services their due recognition and support service sector interests by giving services parity with goods in U.S. trade law.

Passage of the key elements of the Trade in Services Act legislation is essential now for a variety of reasons. The current state of the trade environment is grim, to say the least. Deteriorating trade relations and growing trade deficits have created tensions between our allies and trading partners. Strains on domestic economies have resulted in increasing protectionism as countries turn to tariff and non-tariff barriers as a means of protecting domestic industry and fostering national interests.

Headlines frequently relate the problems of the steel and auto sectors as they encounter problems in maintaining market share and combating foreign competition. In contrast, little attention is given to the growing proliferation of non-tariff barriers that affect the service sector. These barriers appear in the form of more subtle mechanisms: personnel restrictions, discriminatory licensing procedures, discriminatory taxation, discriminatory foreign exchange restrictions, tariff and customs procedures, and denial of entry into foreign markets.

For example:

- The Canadian Income Tax Act denies the deduction on any expenses of an advertisement carried by U.S. stations broadcasting into Canada. A Section 301 case of the Trade Act of 1974 has been filed. However we must strenghen existing trade laws to provide adequate remedies for this type of situation without seeking other kinds of legislation.

- In Australia, there has been a ban on the establishment of new branches or subsidiaries of foreign banks since 1942. In many countries including Brazil, Canada, Egypt, El Salvador, Finland and Greece, foreign equity participation in indigenous banks is severely limited.

- Other potentially threatening and disruptive barriers are restrictions on the flow of information across national borders. Germany, for example prohibits companies from transmitting data out of Germany unless the company carries out some data processing within the country.

This is just a small sampling of the numerous non-tariff trade barriers that inhibit service sector trade.

The time to act is now -- to maintain the growth of services which are the bright spots on the U.S. economic horizon. We must also recognize the vital linkage of trade in services with trade in goods. Through dramatic increases in technological capabilities, more and more international transactions in goods and merchandise depend on the capabilities of the service sector.

As Bill Brock, United States Trade Representative, recently stated "...two-thirds of the American people work not in the production of goods, but in engineering, insurance, data transmission, communications, shipping, banking--all of those fields that are covered by no effective international rules at all. So it is insane to think that you can long continue trade in goods if you have total barriers to the services which facilitate the trade in these goods. The two are totally intertwined, and you can't separate them. And that's why the United States has put a top priority on establishing an international regime over the next five years in the services and investment sectors."

Despite the important role that services play, services do not have parity with goods in U.S. trade law. In order to combat the growth of non-tariff barriers, it is essential to give U.S. trade authorities adequate capabilities for negotiating on the part of service sector companies. Although current U.S. trade law makes some reference to services, a few relatively small but significant changes are necessary to clarify the U.S. mandate to address service sector problems in both bilateral and multilateral discussions.

On the international side, services have not yet been given attention by the GATT. With the upcoming GATT Ministerial in November, it is crucial for the U.S. to send a positive signal to its trading allies demonstrating our commitment to the pursuit of an open trade environment for services as well as goods. The Tokyo Round of multilateral trade negotiations concentrated on goods, leaving services to be dealt with at a later date. Negotiators also lacked sufficient data on service sector problems to commit themselves to any agreements in this area. The November GATT Ministerial offers the U.S. an opportunity to focus high-level international attention on barriers to trade in services, including restrictions on international information flows. The first step is to ensure that U.S. trade officials have the adequate authority and mandate to pursue this type of discussion.

We must act now to prevent the services situation from deteriorating to a point at which solutions are less palatable. If we work together with the U.S. government and with our international partners we can hope to contain the proliferation of non-tariff trade barriers before they dramatically injure trade in services or goods.

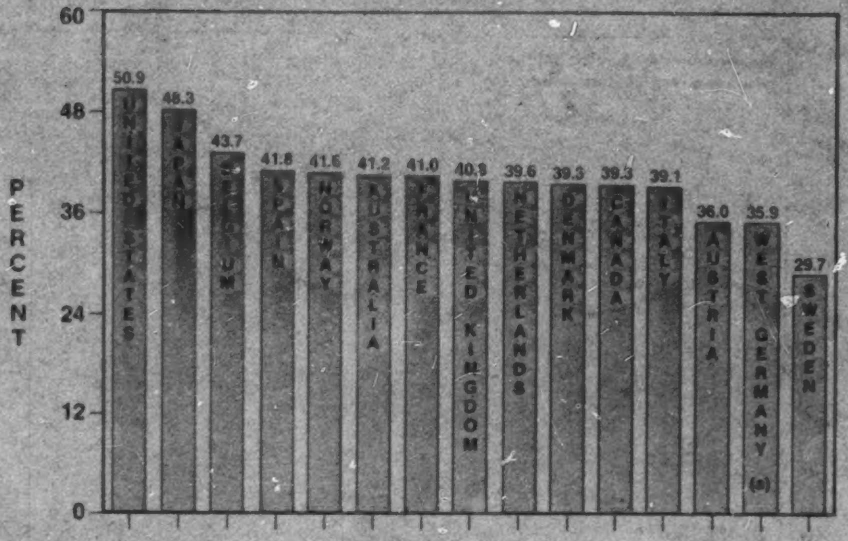
The proposed legislation is essential for giving services parity with goods in U.S. trade law. S. 2058 has several key components:

- The bill amends the negotiating objectives of the Trade Act of 1974 to include the discussion and negotiation of services as principal goals in both bilateral and multilateral discussions and negotiations.
- The bill would consolidate the coordination of services trade policy in the U.S. Trade Representative's Office and would grant Commerce a broad mandate to improve its services data base.
- The bill amends Section 301 of the Trade Act of 1974 to cover service sector problems more completely and explicitly, removing any possible ambiguity that Section 301 remedies do in fact cover services.

There is one provision regarding the role of independent agencies, Section 6, that causes us some concern. Since it is not clear how agencies would interpret the language "taking into account" U.S. market access in other countries, we feel that this authority would best remain under the jurisdiction of the U.S. Trade Representative's Office as described in Section 5. We hope the Subcommittee will amend or delete this Section without impeding the rapid passage of this legislation.

Thank you for the opportunity to address this important issue. I would be happy to answer any questions you may have.

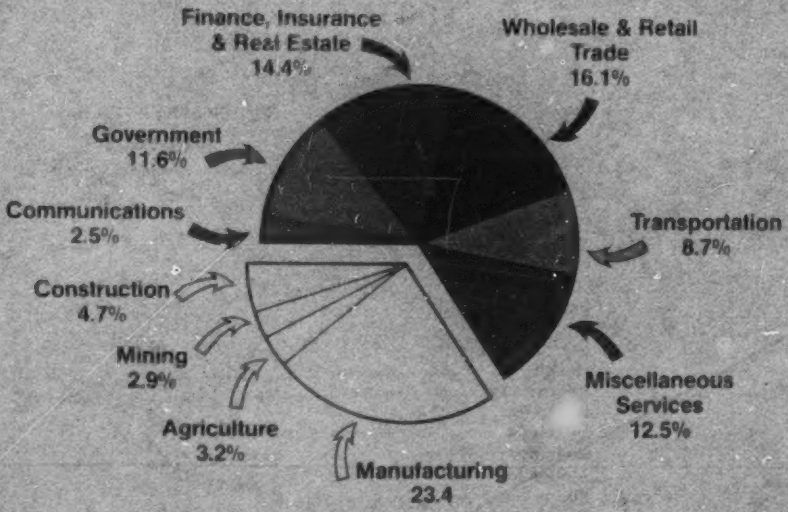
SERVICE SECTOR PROPORTION OF GROSS DOMESTIC PRODUCT* - 1978



* Excluding Government Services
(a) Data Not Directly Comparable

Source: Committee on Invisible Exports (London)

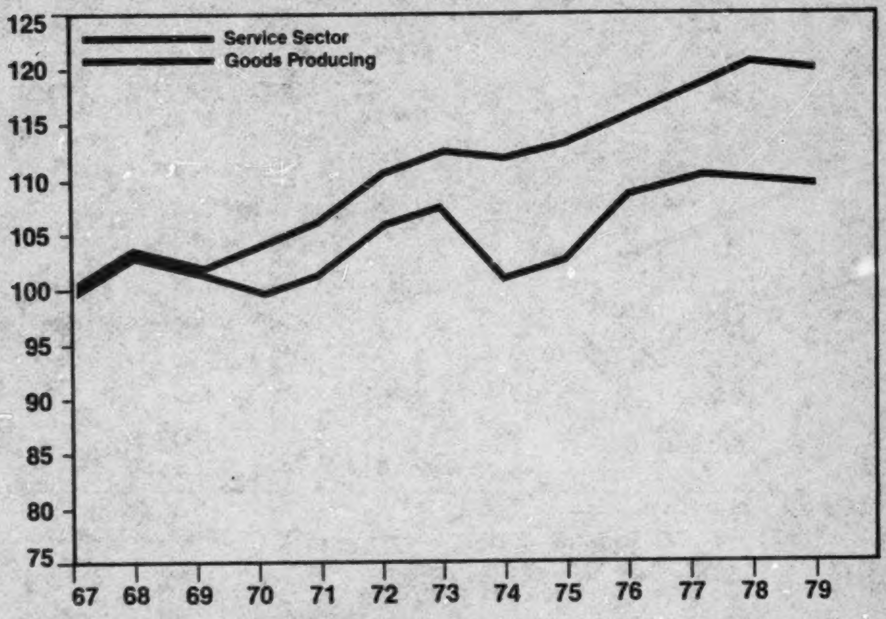
COMPOSITION OF GROSS NATIONAL PRODUCT 1979



Shaded Areas=Services

Source: U.S. Dept. of Commerce, Bureau of Economic Analysis

SERVICE AND GOODS PRODUCING INDUSTRIES TOTAL FACTOR PRODUCTIVITY (1967=100)



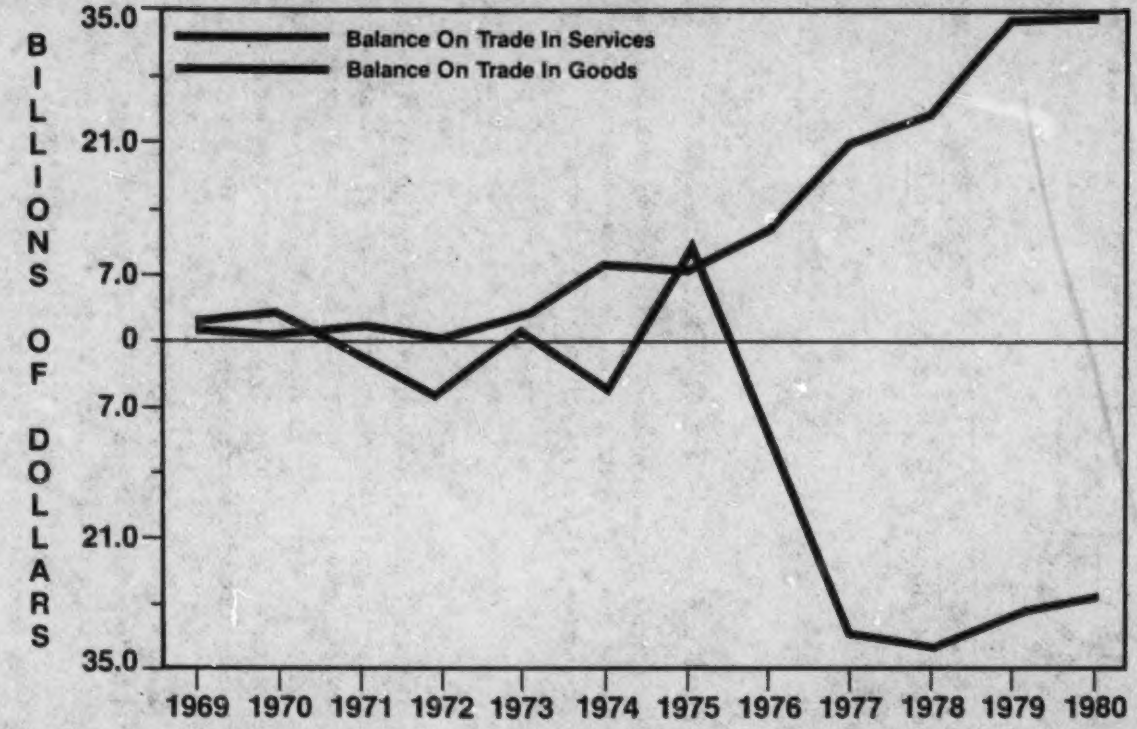
Source: U.S. Dept of Labor, Bureau of Labor Statistics

ESTIMATED FOREIGN REVENUES OF THE U.S. SERVICES SECTOR, 1980

SERVICE INDUSTRY	FOREIGN REVENUES (billions dollars)
Accounting	2.35
Advertising	2.05
Banking	9.10
Business/Professional Technical Services	1.07
Construction and Engineering	5.36
Education	1.27
Employment	0.55
Franchising	1.26
Health	0.27
Information	0.60
Insurance	6.00
Leasing	2.35
Lodging	4.60
Motion Pictures	1.14
Tourism	4.15
Transportation	13.93
Subtotal, 16 service industries	56.05
Miscellaneous financial services, communications, etc.	4.00 (est.)
TOTAL OF U.S. SERVICES SECTOR	$60 billion

SOURCE: THE ECONOMIC CONSULTING SERVICES, INC.

U.S. BALANCE OF PAYMENTS TRADE IN GOODS & SERVICES



Source: U.S. Dept of Commerce, Bureau of Economic Analysis

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COMMISSION ON INTERNATIONAL TRADE POLICY AND TRADE-RELATED MATTERS

POSITION PAPER ON LIBERALISATION OF TRADE IN SERVICES

Statement adopted by the Commission. At its meeting on 30 September, the Executive Board of the ICC granted the Secretary General advance authorisation for the immediate release of this document.

1. In almost all industrial countries and in much of the developing world the service sector has significantly increased in importance over the last thirty years. By 1978 the contribution of the service sector to Gross Domestic Product was at least as important as that of the industrial sector for nearly all GATT contracting parties, and its importance as a source of employment increased accordingly. As with merchandise, a large part of this service activity does not give rise to international transactions, but in many industries international business has also greatly expanded, and now represents a considerable share in trade flows. Between 1967 and 1975 world trade in services increased by about 6 per cent per annum in real terms, and by 1975, exports of services represented over 20 per cent of total exports of goods and services for all countries.

2. Much of this service activity is not conducted purely for its own sake, but is also an essential adjunct to international trade in raw materials and manufactured goods. Though many of the impediments to a free flow of goods have been removed or significantly reduced by the rounds of multilateral negotiations under the auspices of the GATT, many service industries, including, for example, not only the more traditional areas of construction and engineering services, insurance, banking and financial services, legal and medical services and transport,

but also tourism, franchising, information and data services, leasing and consultancy, still confront severe government-imposed obstacles to their international operations. These restrictions not only reduce the efficiency of services trade, but also produce unfair competition among the service industries of different nations, and introduce cost distortions into trade flows of goods. At present these restrictions cannot always be identified or remedied. This is partly because as yet there does not exist an agreed international standard for the treatment of services, which makes it difficult to define the remedies appropriate to resolving problems of unfair competition.

3. A progressive and comprehensive liberalisation of international trade in services is now therefore timely and necessary to reduce the present distortions in such trade. Liberalisation of services trade, permitting greater access for service industries to exercise their activities in foreign markets would act as a stimulus to international trade, and would also often have an innovative effect in local service industries and thus contribute to economic development. The International Chamber of Commerce, with members in over one hundred countries, therefore urges governments of both developed and developing countries to respect and fully implement existing agreements providing for the liberalisation of services trade, and to begin the preparations necessary for mutually advantageous negotiations to reduce impediments to international trade in services on a multilateral and, wherever possible, reciprocal basis.

4. Circumstances in individual countries and existing arrangements in some service markets will influence the pace at which liberalisation can be pursued. At least initially, therefore, the liberalisation of services trade implies:

i) that all such trade be conducted according to the principles of fair and open international competition;

ii) that internationally traded services originating from any country be subject to equal treatment by the recipient nation (the most-favoured nation principle);

iii) that, where they are not in the wider interests of the service user, restrictions on the ability to purchase services across national borders be reduced in as far-reaching and as reciprocal a manner as possible;

iv) that the above principles, and any departures from these principles which are deemed necessary during the transition to a fully liberal services trade system be subject to periodic review and negotiation; and

v) that new limitations to the international free movement of services be avoided as far as possible, and that if a situation were to arise calling for further restrictions, such restrictions be temporary and subject to prior consultation and negotiation.

5. The ICC welcomes the efforts made in a number of circles to compile information on the trade effects of restrictions on international service transactions, and on specific problems faced by individual industries. It hopes that such efforts will continue. However, the ICC believes that, in addition, it is now necessary to develop practical methods and procedures to eliminate the major impediments to international trade in services, or, at least, to greatly reduce their effect.

6. In spite of the differences in activity among the different service industries with international interests, the ICC believes that the underlying principles of liberal trade and fair competition are common to all. Thus, although the impediments to liberal trade in individual service industries might appear different in their detailed application, it is possible to classify them as departures from these underlying principles, in terms of major non-tariff barriers to trade applying to all industries. The ICC therefore puts forward such a classification, which is not exhaustive, which might profitably be used in conjunction with the data at present being compiled in several quarters to develop a framework of obstacles to trade in services which would then serve as a basis for a negotiated liberalisation of this field. (This classification is included as an annex to this document).

Recommendations for Action

7. In the long term, any effective and comprehensive liberalisation of international trade in services must be conducted on a multilateral basis. The extension of the GATT to include trade in services represents the most effective method of achieving this liberalisation for the following reasons:

i) International trade in goods - which is already covered by the GATT - and international trade in services are governed by the same underlying economic principles, and in many cases the impediments involved - subsidy and regulatory practices, government procurement procedures, technical standards and licences - are similar. The impediments which are more specifically related to trade in services can still be regarded as non-tariff barriers, and should be tackled in a similar manner to the non-tariff barriers discussed during the Tokyo Round.

ii) The application of the most-favoured nation principle espoused in the GATT ensures that the benefits from liberalisation will accrue to all nations.

8. The ICC therefore calls upon all governments to accept that the principles espoused in the GATT system for the regulation of world trade be extended to cover trade in services, and urges them to begin preparations towards multilateral negotiations to reduce existing impediments to international trade in services and to create an accepted framework for the conduct of liberal trade in services. There have been proposals for a Special Session of the GATT Contracting Parties in 1982, at which trade in services would be one of the items for discussion, and this initiative is welcomed by the ICC. The classification of non-tariff barriers to trade in services set out in the annex demonstrates that many of the obstacles to services trade are similar in principle for many industries (eg. the existence of subsidies which distort competition, administrative impediments to operation, etc.) and it is therefore possible for the principles of a liberal framework for services trade to be negotiated on an overall multilateral basis, in a similar fashion to the negotiation of the principles espoused in the Codes on non-tariff barriers agreed during the Tokyo Round. This is but a first stage, however,

and does not imply that the application in practice of the regulatory measures required for liberalisation will be necessarily of an across-the-board character, as in certain instances the regulation resulting from negotiated agreement on the basic principles for liberalisation will have to be tailored to meet the specific operating characteristics of the different industries involved.

9. However, the acceptance that the principles espoused in the GATT should be extended to cover trade in services does not imply the exclusion of other fora from this process of liberalisation in the short-term. Important work for trade in services has already been undertaken in other circles, notably the Declaration and Decisions on International Investment and Multinational Enterprises adopted by the Governments of the OECD countries in 1976, and the contribution of agreements in such fora to the liberalisation of trade in services should not be underestimated or ignored. The ICC welcomes the initiative taken in the meeting of the Ministerial Council of the OECD of June 1981, where

> "Ministers expressed the wish that the ongoing OECD activities in the field of services be carried forward expeditiously. They agreed that, in the light of the results of these activities, efforts should be undertaken to examine ways and means for reducing or eliminating identified problems and to improve international co-operation in this area".

In addition, in the absence of overall multilateral agreements, a large measure of liberalisation could also be achieved in the shorter term through a series of industry-specific negotiations. Certain governments are already committed to a liberalisation of trade in services, and the ICC encourages them to enter and expand negotiations with other governments. In addition, certain industries are already regulated by intergovernmental or inter-industry agreement, and initial liberalisation measures might be negotiated using the existing regulatory institutions.

10. The ICC fully recognises that an overall multilateral agreement will require a lengthy period of comprehensive preparation. Therefore, it recommends two specific issues which might be tackled immediately to produce solutions in the near future as a first stage in the progressive liberalisation of services trade. These recommendations do

not imply, however, that other obstacles to services trade are not of equal importance to certain industries, and the ICC hopes that, wherever possible, advances in the liberalisation process might also be made in these other areas at the same time.

i) Government procurement

An Agreement on Government Procurement was negotiated during the Tokyo Round of Multilateral Trade Negotiations under the auspices of the GATT. The Agreement, which entered into force on 1 January 1981, contains detailed rules on the way in which tenders for government purchasing contracts should be invited and awarded. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent, and to ensure that they do not protect domestic products or suppliers, or discriminate among foreign products or suppliers.

At present the Agreement applies primarily to trade in goods, as services are only included to the extent that they are incidental to the supply of products and cost less than the products themselves. However, the Agreement specifically mentions the possibility of extending its coverage to services contracts at an early date.

The ICC therefore urges all governments to respect and apply fully the existing Agreement, and calls upon contracting parties concerned to prepare negotiations, taking into account the experience of the present Agreement, with a view to including services procurement in the Agreement, and to make the list of government entities which would be covered by the Agreement as wide as possible.

ii) Legal establishment and access to markets

The rights of legal establishment and of access to foreign markets concern firms trading in goods and services alike, but are of particular importance to many service industries, owing to the nature of their business. As a first step in liberalising services trade, therefore, it is important that governments extend national treatment for establishment and market access to all firms wishing to establish an operation within their national boundaries. This would best be achieved by means of an agreement including provisions that

1. Where the applicant firm meets the local legal requirements for the establishment of a company in the host country (reasonable allowance being made for the different legal forms under which enterprises may exist), such establishment should be freely granted.

2. The legal requirements for establishment apply equally to domestic and foreign applicants.

3. Information on such legal requirements be freely available.

4. The application procedures be implemented in a non-prejudicial manner.

5. Access to the domestic market for any firm should not be impeded by the imposition of discriminatory restrictions on the size of the firm or the level of sales.

The ICC therefore urges all governments to take up this issue and enter into negotiations to develop an international agreement based upon the principles outlined above, to permit the unimpeded establishment and participation of international service industries wishing to operate internationally.

A GLOBAL FRAMEWORK OF IMPEDIMENTS TO TRADE IN SERVICES

The following classification of barriers to services trade is based on the premise that, notwithstanding the differences in activity among the different service industries covered, the underlying principles of liberal trade and fair competition are common to all. It attempts to draw together data on obstacles to trade in services experienced in specific industries and to classify it in terms of these underlying economic principles. This classification then offers a manageable framework of non-tariff barriers to trade which can be used as a model for a negotiated liberalisation to international trade in services

1. Rights of Establishment and Access to Markets

Establishment in third countries is, in general, more important for many service industries who wish to conduct international transactions than it is for manufacturing industries, as in many cases the provision of the service relies on the existence of a local office or outlet.

However, an additional factor in the successful establishment of a local office is the ability of a firm to gain realistic access to the market in which it wishes to operate. For transport services, for instance , the ability of a vessel to put down and pick up passengers or freight in a particular area is of greater importance when considering market access than is the establishment of a local agency. Any discussion of establishment questions, therefore, should cover equally both establishment legislation - "the bricks and mortar" - and freedom of access to markets. Restrictions on establishment and market access for service industries appear to be some of the most important deterrents to international trade in services for all industries.

Impediments in this category arise from the complete or partial denial of access to a market as a result of:

1) prohibition upon the establishment of local operations or upon the importation of a service by a foreign firm.
2) the operation of a system of licences, required by foreign firms before establishment or import of the services is permitted, which act as a quota upon the number or type of foreign firms granted access

3) legislation which obliges foreign firms to operate under significantly different conditions to domestic firms, thus increasing the cost or decreasing the attractiveness of the service offered in a discriminatory manner.

Examples

Under section 1 above

a) legal prohibition of the establishment of firms.

b) the prohibition upon foreign investment in an existing domestic industry.

c) cabotage, i.e. the reservation of a country's domestic operations to its national flag carriers.

d) limitations on the freedom to pick up or put down passengers/freight in the country concerned, or to proceed through national territory.

e) the prohibition or limitation upon the activities of brokers of services to conduct their business on international markets.

Under section 2 above

a) procedural impediments in the granting of the licence.

b) the requirement that the foreign firm be able to offer a service materially different from those offered by domestic firms before the licence is granted.

c) licences may only cover limited activities, and those activities not included in the licence may not be practised.

d) non-recognition of professional licences to practice awarded in other countries.

Under section 3 above

a) the imposition of cargo-sharing or cargo-allocating agreements, either in national legislation or through the forced use of certain contract clauses

b) limitations in foreign equity holdings or on the amount of capital required for initial investment.

c) discriminatory restrictions upon the level of sales of a foreign firm.

d) discriminatory restrictions upon the level of advertising of a foreign firm.

2. Government Economic Policy and Regulation

Although legislation is necessary to regulate certain aspects of commerce, and to further government macro-economic policies, such legislation often results in practice in barriers to international trade, as its application to domestic and to foreign firms is, in many cases, inconsistent. The legislative measures included in this category are diverse, but when brought together, they represent one of the most common and most effective impediments to international trade in services, in both the industrialised and the developing nations.

Impediments in this category arise where local government economic policy measures discriminate between the operations of domestic and foreign firms, thus providing significantly different operating conditions for the two competing groups.

1) national treatment is not extended to foreign firms.

2) government legislation effectively impedes the export of the service.

3) the application in practice of legislation in the host country is undertaken in an effectively discriminatory manner.

Examples

Under 1 above

a) Foreign firms often face different tax regimes to those faced by domestic firms.

   i) Corporation tax is levied at a higher level on foreign firms than on domestic ones.

   ii) The purchase tax on the service can be set off against the buyer's own corporation tax when domestic services are purchased, but this practice is not extended to the services of foreign firms.

iii) In countries which have no bilateral agreements, or which do not recognise the OECD Convention on Income and Capital, the problem of double taxation arises.

b) Credit facilities extended by governments are often unavailable to foreign suppliers, and private credit sources are often limited in their provision.

c) Exchange control regulations which hamper the repatriation of profits or the movement of remittances, and influence the location of the service transaction.

d) Discriminatory regulations between foreign and domestic firms with regard to contracts, documents required, etc.

Under 2 above

a) taxation practices applying to citizens working abroad act as a disincentive to trade and personnel movement.

b) the extraterritorial application of domestic laws brings the service industry into conflict with the laws of foreign governments when conducting international operations.

Under 3 above

a) The lack of easily obtainable information on local government regulations and policy measures.

b) Problems in gaining access to officials, courts, etc., to file disputes or resolve problems, or the existence of biased procedures once access has been obtained.

c) The use of technical regulations, standards, certification systems on safety, health and manning levels, etc. to discriminate against foreign firms.

3. Direct Government Intervention

In addition to their legislatory role in providing a stable legal framework for commerce and in furthering macro-economic policy, governments in many cases directly intervene in the functioning of the market mechanism to influence market-based decisions, and to further regional, social and industrial policies.

Impediments in this category arise where the competitive position of firms operating in a market is distorted by direct government micro-economic intervention. Such intervention may be by the government itself, by government agencies, or government-controlled corporations.

Such impediments can be split into two categories:

1) government intervention which attempts to favour or improve the competitive position of certain individual firms.
2) intervention which specifically hampers the competitive conditions of foreign firms.

Examples

Under 1 above

a) Government grant and loan facilities offered to industry to further regional and social policies which are not available to foreign firms.

b) Requirements that ancilliary activities be provided by local firms and sales organisations.

c) The selling below cost of competitive services by local government-owned firms.

Under 2 above

a) Restrictions on contractual freedom and the setting of prices and charges.

b) Restrictions or delays in the importation of or access to equipment and utilities necessary for the operation of the service activity.

c) Requirement that factors of production (land and equipment) be leased rather than pursued by foreign firms.

d) Restrictions on the employment of expatriate staff required for the operation of a local office.

4. Government Procurement

A further source of government-imposed barriers to trade in services arises in the field of government procurement, in which the government participates directly in the market as a purchaser of services or in the tendering of government contracts.

Impediments in this category arise where governments discriminate between domestic and foreign firms when undertaking their own activity.

1) government procurement procedures limit government purchases or the tendering of government contracts to local firms.
2) there is an absence of explicit procedures and regulations concerning government procurement, or existing regulations concerning procurement are not applied, allowing discretion and discrimination in procurement issues.

Examples

Under 1 above

a) Specific regulations limit purchases by government departments, local governments and state-owned corporations to certain designated firms.

b) Government tenders are only offered to specific firms.

c) Contract clauses effectively control the allocation of the services (the use of FOB purchase and CIF sale clauses to regulate shipping).

Under 2 above

a) The lack of specific regulations allows an element of preference to be introduced in awarding government contracts.

b) Tenders are not openly announced, which restricts the ability of all firms to compete.

c) The results of tendering are not published to verify the final award of the contract.

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ROUND TABLE ON LIBERALISATION OF TRADE IN SERVICES

11 June 1981

CONCLUSIONS

In the course of the Round Table, which brought together some 50 businessmen and officials from 12 countries and representatives of a number of intergovernmental organisations (GATT, OECD, EFTA, EEC), a general consensus emerged on the importance of the ICC actively pursuing its efforts to promote the liberalisation of trade in services. Such liberalisation would be to the advantage of all countries, whatever their stage of development. In this connection, it was emphasised that trade in services represents $400 bn per annum, representing over 20% of world trade, and a dismantling of the obstacles to the flow of services across frontiers would promote employment and growth, productivity, consumer interests and the development of national economies. The meeting recognised that the achievement would imply a strong move against the present inertia which is noticeable in a number of sectors.

In pursuing the process of liberalisation of trade in services, participants stressed that all such trade should be conducted according to the principles of fair and open international competition. Reciprocal acceptance of obligations was also regarded as important. It was evident that negotiations on this subject would require a long period of preparation, but participants emphasised that the complexity of the subject was not sufficient reason to avoid tackling the issue at the present time. One obstacle to progress was the fact that many national administrations are organised, to a large extent, according to issues relating to particular service industries and, at present, do not have the machinery to deal with the more general question of liberalisation in services. There is no tradition in dealing with services, such as has long existed for trade in goods. The vital role of the private sector organisations was strongly emphasised both in order to impress on governments the real importance of this issue and as a stimulus to them to reorganise their internal administrative responsibilities to deal adequately with the question of international trade in the services sector.

Participants welcomed the work presently being carried out in certain sectors or within certain regional organisations (OECD, EEC, EFTA, etc.). They recognised, however, that when the negotiating stage had been reached, the most appropriate forum for comprehensive liberalisation of services trade would be the GATT, because of its multilateral nature, bringing together all countries in a spirit of cooperation and consensus.

Discussion then focussed on the question of approach - whether present restrictions might be better tackled on a purely sectoral basis or from a global point of view. It was agreed that there were a number of problems, notably public procurement, which were relevant in several industries, which might best be dealt with across the board. The GATT Code on Technical Barriers to Trade was mentioned as a model of the way in which progress might be made in this area. The right of establishment, which should also include access to markets was of particular importance for services trade. This was clearly, however, a matter of considerable complexity, and it was suggested that it might be possible on this and on other problems to define more narrowly the aspects which were of greatest significance to international trade. In particular, the right to buy and the right to sell services were central elements.

Senator ROTH. I next call on Ambassador Samuels. At the same time, I would like to welcome Mr. Shelp, who has been a leader in this whole area.

STATEMENT OF MICHAEL A. SAMUELS, VICE PRESIDENT—INTERNATIONAL, U.S. CHAMBER OF COMMERCE, ACCOMPANIED BY RONALD K. SHELP, VICE PRESIDENT, AMERICAN INTERNATIONAL GROUP, AND GORDON CLONEY, EXECUTIVE SECRETARY, INTERNATIONAL SERVICES AND INVESTMENT SUBCOMMITTEE, U.S. CHAMBER

Mr. SAMUELS. Thank you, Senator. I am Mike Samuels, the vice president-international, U.S. Chamber of Commerce, and I have with me the vice chairman of our international services and investment subcommittee, Mr. Ronald Shelp, and the executive secretary of that subcommittee, Mr. Gordon Cloney.

We appreciate the opportunity to be here. The U.S. Chamber of Commerce is the largest federation of business and professional organizations in the world. As such, we represent a cross-section of the American business community, with representatives covering the entire areas of the American business life. And I am pleased to say that approximately 160,000 of our members represent service industries.

Our comments today deal with trade policy and service industries. The chamber is concerned also with the other current issue affecting U.S. trade policy, reciprocity, and we have submitted a statement on that subject on May 6.

There seems to be some confusion over the relationship between reciprocity legislation and services legislation. We see the two as separate issues. Service legislation is to bring service industries fully within U.S. trade policy. Reciprocity legislation is addressing market access issues. We urge you to keep these issues separate and not to merge them.

The U.S. Chamber supports S. 2058 subject to two reservations having to do with sction 6 and with clarifying "sction 301" remedies. We have nine major recommendations to remedy the principal shortcomings in the service trade. Many of these are taken care of very well by S. 2058, and these are the following:

We believe that services need to be given priority equivalent to that given merchandise and agricultural products. The legislation does that.

We feel that barriers to establishment of U.S. service enterprises in foreign countries are within the realm of "barriers to international trade" as that term is used in section 102 of the Trade Act of 1974. Section 3 of S. 2058 includes provisions to this effect. We support these.

The definition of services is usefully clarified in S. 2058, section 3, subsection (d). We note the timeliness of mentioning information flows in this subsection, as other people have testified today. We support this as well. However, we suggest this definition also include restrictions on the right to commercial information itself.

Consultation by U.S. negotiators with the private service advisory committees when developing negotiating objectives is necessary, and S. 2058 addresses this need in section 3(b)(3). The chamber supports this.

State regulators must be part of any negotiations dealing with the services they regulate. Provisions to this effect exist in the legislation and we support this.

Central coordination of U.S. service trade policy is absolutely essential. We are pleased that that is intended by the legislation and that it is placed where it should be, in our opinion, which is in USTR. Thus, we support those sections that deal with this.

In further reference to Federal regulatory agencies, we believe, however, that section 6 should be deleted completely from the legislation because it has come to be viewed as a reciprocity provision. We believe that openness of foreign country markets can be a consideration in regulatory agency decisionmaking if on a par with the other criteria considered by the agency. In general, we do not support sectoral or regulatory reciprocity in services trade.

We also are pleased that the Department of Commerce is given a clear mandate relating to services.

And we believe that the remedies under section 301 of the 1974 Trade Act as amended envisage the imposition of a fee or restriction on a supplier of a service in addition to restrictions on the service itself. But because a question on this point has been raised, we support section 4, subsection (b) of S. 2058, that would amend section 301 expressly to include a foreign supplier of services.

We also believe that equality of treatment under law of trade in services and of trade in merchandise requires providing service industries a form of redress from injurious subsidized competition or unfair pricing by foreign suppliers. We have some suggestions in our statement for language that could be used to improve S. 2058 in this area.

In conclusion, Mr. Chairman, we are pleased with what you are doing. We urge you to pass the legislation promptly, and we urge you specifically to make two changes: One is the deletion of section 6 and the other is the change that clarifies section 301 authority.

[The prepared statement of Mr. Samuels follows:]

STATEMENT
on
THE TRADE IN SERVICES ACT OF 1982
(S. 2058)
before the
SUBCOMMITTEE ON INTERNATIONAL TRADE
of the
SENATE FINANCE COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Michael A. Samuels
May 14, 1982

I am Michael A. Samuels, vice president, international, U.S. Chamber of Commerce. With me are Mr. Ronald K. Shelp, vice president, American International Group, and vice chairman of the U.S. Chamber's International Services and Investment Subcommittee, and Mr. Gordon J. Cloney, director, special policy development, U.S. Chamber of Commerce and executive secretary of the Subcommittee. We appreciate the opportunity to be here.

The Chamber of Commerce of the United States is the largest federation of business and professional organizations in the world, and is the principal spokesman for the American business community. The U.S. Chamber represents more than 240,000 members, of which more than 235,000 are business firms, more than 2,800 are state and local chambers of commerce, and more than 1,300 are trade and professional associations.

Over 85 percent of the Chamber's members are small business firms having fewer than 100 employees, yet virtually all of the nation's largest industrial and business concerns are also active members. Besides representing a cross-section of the American business community in terms of firm size, the U.S. Chamber also represents a wide spectrum by type of business. Such major individual sectors of American business -- manufacturing, retailing, construction, wholesaling, finance and other services -- each have more than 15,000 businesses represented as members of the U.S. Chamber. Thus, we are very cognizant of the trade problems of the service sector as well as the issues facing the business community at large.

The U.S. Chamber supports S. 2058 subject to two reservations having to do with Section 6 and with clarifying "Section 301" remedies. These are addressed subsequently in this testimony. We agree with the authors that service trade should be expanded and barriers reduced; that addressing service trade issues needs to be fully integrated into U.S. trade policy and the process coordinated through the Office of the United States Trade Representative (USTR).

Our comments today deal with trade policy and service industries. The Chamber is also deeply concerned with the other current issue affecting U.S. trade policy -- reciprocity -- and we have submitted to this Subcommittee at its May 6 hearings a detailed statement on that subject. There seems to be some confusion over the relationship between reciprocity legislation and the services bill. We see the two as separate issues. Service legislation is to bring service industries fully within U.S. trade policy, while reciprocity legislation is addressing market access issues.

BARRIERS TO TRADE IN SERVICES

Service industries are heterogeneous. They deal in advertising, accounting, architecture, banking, insurance, air transport, lodging, licensing, education, entertainment, leasing, franchising, investment and finance, construction, communications, data transmission, information, shipping, motion pictures, tourism and other services.

The diversity of service "products" and the widely differing processes which create them often leads to the conclusion that barriers to trade in services must be equally diverse and a multilateral, multi-industry approach to the trade barriers affecting services is not possible. The Chamber has reviewed this, concluding the different services, as varied as they are, do face common trade barriers which are very similar in nature to nontariff barriers in merchandise trade. These barriers to services amount to unfair trade practices because they are used by a service importing economy to protect the country's local service industries and market.

Defining service trade barriers requires a broader conceptual framework than is the case with merchandise trade. Some barriers affect services provided through international trade, that is, when the service is provided from a source in the exporting country to a consumer or client located in the importing country. However, barriers also affect service trade carried out through "establishment;" -- that is they impact on the setting up and/or the operation of the local branch or subsidiary which may be essential to doing business in a particular service industry. Also, governments may require establishment by the foreign service firm for ease of regulation even though the firm's service could be provided on an "international trade" basis.

American service industries are encountering growing barriers both in developing and industrial countries. In spite of the diversity of the service sector, many of the obstacles faced are common and, in many cases identical -- whether services are supplied through trade or through local establishment of subsidiaries, branches, etc. Furthermore, barriers are looming over some of the new, heretofore unrestricted and high potential service activities, such as information transmittal, electronic communication, and transportation data flows. Also, in certain service areas where international arrangements once protected international commerce, for example, in the acquisition and protection of industrial property rights, the traditional protections are being eroded and ignored.

Major types of barriers to trade in services, both barriers to "international trade" and to "establishment" can be grouped as follows:

o Interference with access to market - The provision of a service may be blocked by a country prohibiting across-the-border importation of a service and/or by denying the foreign service enterprise the right of establishment. Other less blatant protectionist practices -- for example, discriminatory licensing and registry of foreign service firms -- can have the same effect of blocking market access.

o Interference with transactions and financial structure - Regulatory practices can be used to slow or block international transactions by foreign service firms. Discriminatory taxation or tariffs may create barriers. Issuance of foreign exchange can be denied both to service firms and to clients purchasing a service. Unreasonable discriminatory requirements may be applied to capital structure, ownership and financial management of establishments.

o Interference with access to production inputs - Foreign service firms may be denied access to necessary equipment; visa restriction may limit access to foreign personnel or access to producer services sourced outside the importing economy may be denied. Or, access may be restricted by local content requirements, performance requirements, or employment quotas. Proprietary information, industrial property rights, processes, or know-how used by a firm may not be protected.

o Interference with marketing - Sales by foreign service enterprises may be subject to quotas or restrictions which limit their range of commercial activity. Technical or other standards may be used to block foreign services sales. Marketing practices by foreign service firms may be curtailed or prohibited. Government procurement opportunities may be denied. Contract arrangements with local customers may be unenforceable. Monopolistic arrangements by local private sector companies may, with official cognizance, close a service market to foreign competitors or official policies may also restrict sales to national or other selected companies.

o Trade-distorting government behavior - The provision of most services is heavily regulated and this offers great opportunity for interference with the trade of foreign service companies through discriminatory, protectionist behavior by regulators. Protectionist regulatory behavior may be formal, based upon law or written regulation, or it may be achieved indirectly through pettifogging, delay or other arbitrary practices by officials. Also, government-controlled services or government facilities that are made available to local competitors may be denied to foreign firms or made available on less favorable terms. Subsidization of national service firms can skew competition in domestic markets and in third country markets. Such subsidization may make it possible for the national firm to offer its services at prices that would otherwise be uneconomic and to sustain the operating loss for indefinite periods of time.

The widespread distribution of barriers to trade in services clearly justifies the pioneering authorities to negotiate reductions in such barriers provided by the Congress in 1974, authorities that were restated and strengthened in the Trade Agreements Act of 1979. The Chamber believes that legislation that will further strengthen U.S. policy directed toward multilateral negotiation to reduce barriers to trade in services is needed. Also in our view, it is important that our trading partners know the Congressional intent remains firm.

SERVICE TRADE PROMOTION

The Chamber supports a comprehensive centrally coordinated trade policy. The question of discriminatory practices and barriers is the *defensive* aspect. There is a second aspect -- the *promotional* challenge which service industries and the government face together. This challenge comes from competitor natins where using "fair" practices, the governments have done a much better job of promoting and advancing their service trade than we have. These governments, often in countries having modest service trade accounts, have recognized what we, with a $38 billion surplus in our services account, have taken for granted -- the major role service companies play in trade, in balance of payments accounts, and in support of a country's general economic well-being.

The Chamber has reviewed the area of service trade promotion by the U.S. government and has reached several conclusions.

o First, service trade promotion must be a priority on a par with manufacturing and agricultural trade promotion. We understand the Administration is taking steps to bring this about.

o Second, many existing U.S. promotion programs now focusing on goods can be adapted to include services. This is important in an area of tight budgets. New programs should be developed on a shared-cost basis.

o Third, the country specialist staff within the Commerce Department and the overseas staff of the U.S. Foreign Commercial Service have heretofore not been directed to support services (e.g. develop leads, build a body of foreign market information, etc.) with the same vigor they are expected to apply in support of manufacturing and agricultural exports.

o Finally, financing for service trade appears deficient but more analysis is needed. The Export-Import Bank, U.S. agencies monitoring the multilateral development banks, and the Agency for International Development do not seem to give services sufficient attention. U.S. service trade potentials are not factored into their strategies nor are the service opportunities the programs create given sufficient attention.

TOWARD STRENGTHENED LEGISLATIVE AUTHORITIES

The Chamber, through several task forces and policy groups, has devoted considerable attention to the adequacy of U.S. trade law as it relates to the problems and needs of our service industries. We feel that in general such coverage is incomplete. The mandates of the USTR and the Commerce Department need to be more clearly set out. In general, radical surgery is not needed to address these shortcomings.

Recent analysis by the Chamber has led to several recommendations to remedy principal shortcomings as noted below.

o Presidential Negotiating Authorities now cover services. However, services need to be given a trade priority equivalent to that given merchandise and agricultural products. A clear congressional directive to the President to seek agreement in service trade as a principal objective under Section 102 would avoid services being virtually ignored in any future negotiations as occurred during the past Tokyo round. Section 3 (a) of S. 2058 addresses this need.

o Barriers to Establishment present a potential negotiating problem. While we feel that barriers to establishment of U.S. service enterprises in foreign countries are within the realm of "barriers to international trade" as that term is used in Section 102 of the Trade Act of 1974, arguments have been made that establishment related issues involve investment, not trade, and therefore are not covered. Legislative clarification is in order, we feel, to prevent any potential problem. Section 3 of S. 2058 includes provisions to this effect.

o Definition of Services are usefully clarified in S. 2058, Section 3 (d). We note the timeliness of mentioning information flows in this subsection. We support this and also suggest that this definition go beyond "transfer of information" and "use of data processing facilities" to include restrictions on the right to commercial information itself including industrial property rights. Explicit reference to the need for fair treatment of industrial property rights in service trade negotiations would be important and in the U.S. commercial interest at a time when traditional standards for protecting such rights are being eroded throughout the world.

o Consultation by U.S. negotiators with the private advisory committees while negotiating objectives are being developed is necessary. This would take the advisory process a step further than was the case during the Multilateral Trade Negotiations (MTN) when, as a rule, negotiating objectives were not developed jointly although the advisory committees were kept informed of negotiating developments. S. 2058 addresses this need in Section 3 (b)(3).

o State Regulators must be part of any negotiations dealing with services they regulate. The USTR should consult with the states before the U.S. sets its negotiating strategies or decides on methods of implementation. Provision to this effect are made in S. 2058, Section 3 "(b)(1)" and "(b)(2)."

o Central Coordination of U.S. trade policy is absolutely essential in the Chamber's view. This applies equally to policy affecting merchandise and services. The coordination of services policy is the more complex, however, because not only cabinet departments are involved. A number of independent regulatory agencies also are part of the picture. Consequently, there is a need for coordination and the problem is a delicate one. We believe the USTR should, through the Trade Policy Committee and its Subcommittees, have the lead responsibility and the authority necessary for involving federal departments and agencies in service trade policy formulation and negotiation.

The coordination process must be two-way. Interested departments and agencies must keep the USTR informed of developments affecting trade in services. Federal departments and agencies responsible for service sector activity including its regulation in the U.S. should advise the USTR of pending matters involving: (1) the treatment accorded United States service sector interests in foreign markets, or (2) allegations of unfair practices by foreign governments or enterprises in a service sector and proposed disposition of such matters.

The relationship between the regulatory agencies and USTR is essentially consultative and USTR should not have authority to dictate regulatory decisions. By the same token, the agencies consulted by USTR on service sector trade policy developments (including any negotiating strategies) should not have primary responsibility for trade policy formulation. Particularly when addressing unfair trade practices the final decision must lie with the USTR, acting for the President. Otherwise, we do not have a coordinated trade policy.

We support Sections 5 (a) and (b) of S. 2058 which provide for such overall coordination.

In further reference to federal regulatory agencies, openness of foreign country markets should be a consideration in agency decision-making, together with the other criteria considered by the agency although we do not support sectoral or mirror image reciprocity in U.S. regulatory proceedings or in services trade. Because it has come to be viewed as a reciprocity provision and, hence, controversial, Section 6 be deleted from S. 2058.

o The Department of Commerce accountability for carrying out a program of work to support the USTR lead in service trade negotiations and to carry out service trade promotion (for which Commerce has the lead) is necessary. The Department of Commerce has just gone through the third reorganization of its service function in four years. Although the trend to date has been to improve service trade programs, in qualitative and quantitative terms, the absence of a clear legislative mandate means that frequent reorganization could in the future be used to reduce or eliminate service trade programs. Hence, to assure permanency over time, we support Section 5(c) of S. 2058 which would authorize the Secretary of Commerce to establish a service industries development program designed to promote U.S. service exports, and collect and analyze information concerning international trade in services and U.S. service sector competitiveness. The responsibilities of the Secretary of Commerce in this area should complement the trade policy formulation and coordinating role of the USTR. In carrying out the mandate of Subsection 5 (c), the Secretary should take great care not to impose unnecessary or burdensome reporting (or other) requirements on service sector enterprises.

o Section 301 of the 1974 Trade Act provides for the imposition of "fees or other restrictions" on the services of foreign countries in the U.S. market to retaliate against foreign trade practices which are either unjustifiable or unreasonable and which burden U.S. commerce. This provision is, we believe, intended to cover the imposition of a restriction on a supplier (actual or potential) of the service through, for example, a denial of a request for a license to operate, in addition to restrictions on the service itself. But because a question on this point has been raised, we support Section 4, Subsection (b) of S. 2058 which would amend Section 301 to expressly include foreign suppliers in the U.S. market.

o Subsidization and Unfair Pricing. We feel that equality of treatment of trade in services and trade in products under U.S. trade laws require providing service sector industries a form of redress from injurious subsidized competition or unfair pricing by foreign suppliers. While such problems may not exist for some service sectors (e.g. banking), in other areas (e.g. air transportation) subsidized competition and below cost sales have caused significant problems.

While we believe that Section 301 was fully intended to address subsidies and unfair pricing in the service sector, in practice questions have been raised about executive branch willingness to apply this section in such cases. Clarification of Section 301 may be needed to resolve this situation. One possible approach would be to specify that service industries can seek relief against subsidies and unfair pricing under Section 301. This might also include provisions that would allow USTR adequate flexibility while precluding outright refusal to act on service industry petitions seeking such relief. S. 2058 does not address this issue and we commend it for your consideration.

In conclusion, the U.S. Chamber feels that Congress, U.S. industry, and the Administration must continue a single-minded effort to bring service trade barriers to the multilateral negotiating table. The General Agreement on Tariffs and Trade (GATT) must undertake a work program that will set the stage for a round of multilateral negotiations. During the second half of this decade, such negotiations should begin the process of subjecting barriers to trade in services to rules and constraining procedures just as was done to merchandise trade barriers. This process will be no easier than was the effort in barriers to trade in merchandise and in commodities. Precisely because the process cannot be seen as rapid or simple, we must move from the analytic to the negotiating stage.

We are grateful for the opportunity to present these views. Trade in services is an area of great importance. We compliment this Subcommittee and the authors of S. 2058 for considering means to enhance related U.S. policy. We urge positive action on S. 2058 this year if at all possible.

Senator **Roth**. Thank you, Ambassador Samuels.

I note that each one of you has testified to the importance of action now, that we should not delay in consideration of this legislation. I would just like the record, even though I asked you to summarize, to show the kinds of problems we are facing.

I believe it is in your testimony, Mr. Freeman, you list some examples of nontariff barriers that are developing in the area of services. You note that an informal association of charge and credit card companies in Japan refuses to permit American Express to be a member. We have already talked about Canada and its discrimination against advertisements on U.S. stations. In Australia there has been a ban on the establishment of new branches or subsidiaries of foreign banks since 1942.

These kinds of approaches seem to be spreading. Another one that seems particularly serious, in light of the knowledge-related industry's growth and potential, is the threatening and disruptive barrier to the flow of information across national borders. For example, Germany prohibits companies from transmitting data out of Germany unless the company carries out some data processing within the country.

My question to you is, what will be the impact on jobs in the United States if we do not take action? After all, that is an important, perhaps the most important, consideration. Do you see expansion of the services sector meaning more jobs, or our failure to act leading to a loss of job opportunities here at home?

Mr. **Freeman**. Mr. Chairman, I can only speculate about that, but I have very strong speculations. I think you would see a steady deterioration in employment in these areas. One of the fastest-growing areas is information processing in the United States, information processing, which is the heart of insurance, banking, financial companies, to mention a few.

As these firms expand around the world, they continue to employ people at home. Usually service sector companies do not export jobs. They do not have that kind of problem.

I would say that if we see—we are starting to see this now—a deteriorating trade picture for services, it would have to be accompanied by a deterioration in employment. Therefore, given the unemployment situation we face now, there is haste.

Senator **Roth**. Any other comment?

Mr. **Kullberg**. I would only comment also, Mr. Chairman, that in our remarks there is an additional benefit to industries other than the service industries by having the ability to serve in another country, to provide the knowledge of the use of U.S.-manufactured equipment. Without that ability in another country, the export of the hard goods is limited also.

Senator **Roth**. I think that is a very important point, that there is a direct link between manufacturing and the service industries, that the expansion of our service industries would have a beneficial impact on the export of goods as well.

Mr. Samuels?

Mr. **Samuels**. Senator, I think it is very important. If we assess our own economy correctly and note the vast importance and increasing importance of services to our own economy, if we believe that it is important to maintain an open world trading system, it is very important to the strength of our economy, the growth of our economy, that the trade barriers service industries face are regulated internationally so that they get the benefit of the same trade opportunities that other industries involved in manufacturing trade get.

Senator ROTH. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

First, I think the testimony is helpful here. Again, the specifics are always good. Mr. Freeman, you have given us some here. And I would like to also say, while addressing you, Mr. Freeman, that we certainly appreciate the help that Jim Robinson has given in this whole field in drawing the attention of the American public to the importance of the service industry.

I attended his speech at the Press Club in which he outlined what service industries really mean, and I think that raised the focus of it.

Do I understand from your testimony that, with the exception of section 6, Mr. Freeman, you support our legislation?

Mr. FREEMAN. Absolutely.

Senator CHAFEE. Now, the difficulty is going to come here—well, first, do I understand that you—I am going to ask Mr. Kullberg this, and Mr. Samuels. Do you believe, as does Mr. Greenberg, that we should expand the coverage of services in the GATT, or should we proceed with separate multilateral or bilateral service agreements?

Mr. FREEMAN. I think the main emphasis should be in the GATT. I think the GATT has been getting some bad press recently, but I think it is an institution around which we have to build and make it stronger.

I would not rule out other multilateral arrangements in specific kinds of situations. I think there will be bilateral disputes that will come up, and occasionally bilateral resolutions of them. But I do think the GATT is the main institution from which we should build a services regime.

Senator CHAFEE. Mr. Kullberg?

Mr. KULLBERG. I would support the efforts through GATT also. I think that any bilateral or multilateral efforts have to be there as a potential, but I would think of those arrangements as second best to the GATT.

Senator CHAFEE. Mr. Samuels?

Mr. SAMUELS. The first factor is that we support there being some multilateral agreement. The best place for such an agreement is GATT. But if GATT for its own reasons finds itself unwilling, the members find themselves unwilling within GATT to address these questions, we should seek some other way to get them addressed multilaterally.

Senator CHAFEE. The worry I have is that any time we have got a surplus—I think the testimony is something like a trade surplus like $30 billion in this particular area—that obviously indicates that the other countries are not doing so well. So thus there is going to be a good deal of foot-dragging, it seems to me, in the GATT for those other countries to enter into the kind of agreements that we would find acceptable.

Obviously, we have the techniques, apparently, with Mr. Freeman's company and the others, the Chamber companies and Mr. Kullberg's company. A good bit of the business is overseas. And so I am not sure what is going to get them to come into GATT and really hustle.

Mr. **Freeman**. I think, Mr. Chairman and Senator Chafee, that, again, some of the other countries have large and visible surpluses as well. Some of them have deficits. The German Minister of the Economy recently said very strongly that a GATT approach on services was a necessity in the November meeting. We see that also from the United Kingdom. The United Kingdom has always a large surplus in invisibles.

I think they will come to this position. The United States historically has always been a leader in trade initiatives. We are doing it again. And I do not think the question so much is the forum, but I think our trading partners will come around rather quickly, particularly as they see this legislation moving. It is a major, major signal, and I think we will get a very healthy work program from the GATT in November and negotiations some time in the early to mid-1980's.

Senator **Chafee**. Thank you.

Mr. Kullberg, if you could send in some specifics to go along with your testimony, because you mentioned on page 1, "We have observed firsthand restrictions on providers of service in many countries, including the United States." Each of those illustrations, with the United States and other countries, would be helpful, if you could send in a few illustrations.

Mr. **Kullberg**. I certainly will.

[This additional information was subsequently furnished:]

SENATE FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE

HEARINGS ON S. 2058

MAY 14, 1982

DUANE KULLBERG, MANAGING PARTNER

ARTHUR ANDERSEN & CO.

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

The written statement submitted by Arthur Andersen at hearings on S. 2058 referred to "restrictions on the providers of services in many countries, including the United States." In January of 1976, Arthur Andersen submitted a statement to the United States International Trade Commission on Service Industries and the Trade Act of 1974. Parts of those comments covered the role of international accounting in world trade and, in particular, the restrictions on the international practice of accounting both in foreign countries and in the United States.

Attached are extracts from that statement which, though submitted over six years ago, still provide examples of the types of restrictions encountered in providing services in many parts of the world. Particular reference is made to the discussion on pages 4 through 6.

THE ROLE OF INTERNATIONAL ACCOUNTING

International accounting plays a crucial role in facilitating international capital flow and otherwise advancing the objective of the Trade Act of 1974 "to promote the development of an open, nondiscriminatory and fair world economic system. . ." International trade and commerce inevitably involve complexities and risks that do not exist when business is limited to any one country. For example, the problems of direct and indirect trade barriers, multinational taxation, investment regulations, exchange controls and differing legal requirements are characteristic of the economic climate in which international business is conducted. Accounting cannot solve these problems, but the existence of sound, uniform, internationally recognized accounting standards for measuring and reporting economic realities could reduce the communications problems that complicate planning and conducting business on an international scale.

Today, international accounting has a new role to play in helping to overcome the hostility to multinational enterprises by increasing the accountability of such companies to host and home countries.

Most governments appear to agree on one issue: the urgent, overwhelming need for more and better financial data on the global activities of multinational companies. International authorities have reached the same conclusion.

In its report to the United Nations last year, the Group of Eminent Persons called for such data on a priority basis to better assess the real effects of foreign direct investment and to provide a base for improved surveillance--and perhaps regulation.* The Commission on Transnational Enterprises, created by the UN in response to that report, decided at its first meeting--in March 1975--to make the disclosure issue its first order of business. The OECD Committee on International Investment and Multinational Enterprise is currently considering a five-part statement calling for a sharp increase in the availability of financial data, probably on a voluntary basis. It is expected to release a draft disclosure code as early as the spring of 1976. In response to these initiatives, the Advisory Committee on Transnational Enterprise of the Department of State has created its first subcommittee--the Subcommittee on Information Disclosure--to consider this matter from the standpoint of United States policy.

Improved corporate disclosure, however, will be credible only if the data and interpretations disclosed are reported on by capable and reliable accountants. Only accounting firms with a worldwide practice can effectively audit multinational corporations which must present financial information and interpret on a comparable basis from a number of countries. Only such firms are sufficiently knowledgeable about the varied accounting practices of different countries to standardize and report on such data in a comprehensive, consistent and reliable manner. And, realistically, only such firms are in a position to develop and implement worldwide accounting and disclosure standards.

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* The Impact of Multinational Corporations on Development and on International Relations (United Nations, 1974) at 95-96.

Emerging trends in national law may make it essential that international accounting firms play this role. In the wake of the collapse of the Pacific Acceptance Corporation, an Australian court noted the desirability of having the audit of all components of a company, wherever operating, performed by the same firm.* Reporting on the Equity Funding situation, The Wall Street Journal observed that at least one alleged fraud involving intercompany transfers was facilitated because different auditors were engaged.** The Business Corporation Act of Ontario, Canada, in effect, requires the reporting auditor to be responsible for work performed by the auditor of each component of a Canadian-based multinational company.***

In short, the need for the international practice of public accounting has grown more urgent in light of recent trends and developments, including:

- The increasing competition for scarce capital in the world marketplace.
- The internationalization of corporate equity ownership.
- The pressures by international agencies and individual country governments for additional information and uniform data collection systems to assess the scope and importance of multinational companies.

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* Pacific Acceptance Corp. Ltd. vs. Forsythe, 92 W.N. (N.S.W.) 29 (1970).

** The Wall Street Journal, January 6, 1975, at 32, Cols. 1-6. The Equity Funding case did not involve multinational activities but the point made in the Journal is even more applicable in that context.

*** See, Hill, "Reliance on Other Auditors," in Audit Decisions in Accounting Practice, R. S. Woods, ed. (Ronald Press Co., New York, 1973), for a discussion of the changes in the Province of Ontario Business Corporation Act of 1970 resulting from the Report of the Royal Commission which investigated the collapse of the Atlantic Acceptance Corporation Ltd.

- The difficulty of protecting shareholders of a multinational enterprise audited by a multiplicity of local firms against misrepresentation and fraud.
- The increased use of international joint ventures and contractual arrangements for direct sale of technology, turn-key projects, etc.
- The growing challenge to transfer pricing practices and the fair value of technology transfers.

RESTRICTIONS ON INTERNATIONAL PRACTICE OF ACCOUNTING

Accounting firms with a worldwide practice are in a position to accept the responsibility and play a leadership role in meeting these challenges only if they are permitted to practice freely as integrated, international professional organizations in all countries in which they have client responsibilities. Such firms are, however, confronted with growing restrictions on the professional practice of public accounting in countries througout the world. For example:

- The loss of the use of the name of an international accounting firm through laws requiring firm names to include only the names of living accountants and/or titled accountants of the country.
- The prohibition of professionals of a country from associating themselves with persons who are not professionals of that country, which poses serious problems for United States accounting firms attempting to serve a world market with foreign nationals as partner or associates.
- Discriminatory visa requirements for foreign professionals.
- Citizenship restrictions on the ability to obtain qualifications to practice.
- Law prohibiting reciprocity for professionals of other countries under any circumstances.
- Restrictions on remittances of funds for technology provided and services rendered within the international firm.

In addition, there have been instances of extralegal activities by local professional bodies, such as press campaigns against international firms, efforts to pressure subsidiaries of United States companies to employ local accounting firms and the prevention of the use of international firms by joint ventures involving U. S. and foreign investors. These efforts are not in the best interest of investors in the United States and could lead to significant future problems. Moreover, forcing investors in multinational companies to rely upon many individual local accounting firms for the financial information on which to base investment decisions will detract from the ability of such companies to raise capital funds.

RESTRICTIONS IN THE UNITED STATES

Historically, practice by qualified foreign accountants in the United States has also been severely restricted. The trend, however, of state laws governing the practice of public accounting is running in the direction of removing such restrictions.

Since the accountancy laws of the states vary, summarized below are the results of a recent survey conducted for Arthur Andersen & Co. by the law firm of Fried, Frank, Harris, Shriver & Kampelman.

- United States citizenship may no longer constitutionally be required as a condition to certification as a public accountant, although some state statutes have not yet been amended to reflect this legal development. Presently, 27 states, including New York, Pennsylvania and California, have no citizenship requirements.
- The residency requirements of state accountancy laws do not appear to pose a substantial barrier to practice by a foreign accountant.
- The majority of state laws governing the practice of public accounting afford some form of recognition to foreign public accounting credentials. Thirty-five states provide for issuance of a Certified Public Accountant ("CPA") certificate to foreign accountants, subject to the applicant's having met educational and experience standards substantially equivalent to those required under state law. Twenty-two states (including some which provide for CPA certification as mentioned above) allow foreign accountants to practice under their own titles or a title such as "accountant," so long as the "Certified Public Accountant" ("CPA") designation is not used.
- Nearly all states authorize or otherwise allow persons who are not CPA's, including foreign accountants, to perform a variety of accounting services as employees working under the supervision of registered CPA's.
- The opinions of foreign accountants with respect to financial statements are generally acceptable for purposes of satisfying the applicable requirements of the Securities and Exchange Commission, the New York Stock Exchange and the American Stock Exchange, as long as the accountant is "independent" and satisfies the various technical requirements which accountants must meet.

- In 33 states, a foreign accountant may practice accounting temporarily, while on business incident to his foreign practice, without obtaining a special permit or having to register. In seven additional states, a foreign accountant may practice temporarily by obtaining a special permit or by registering.

These developments do not mean that foreign accountants may qualify automatically as CPA's. Protectionist policies are still followed by some state accounting boards. Nonetheless, many legal barriers have fallen, and, with the pressure of increased scrutiny of the courts, the United States may be on the verge of entering the international era in the practice of accounting.

CONCLUSION

The General Agreement on Tariffs and Trade (GATT) has been effective in freeing world trade in goods from domestic barriers. But, GATT does not deal with services, presumably because there was so little international trade in services when the treaty was originally negotiated in the late 1940's.

Now, however, services--banking, tourism, insurance and transporation as well as accounting and other professional services--are among the fastest growing international industries. The absence of international rules, however, makes it difficlt to cope with the restrictions described above.

There is now an opportunity for achieving changes in international services regulations similar to those achieved in the international trading rules. The Tokyo Declaration of 1973 committed most non-Communist countries to the Multilateral Trade Negotiations. The Declaration includes a firm commitment to reform. The negotiations provide a rare opportunity to liberalize international trade in the service industries and establish procedures monitoring compliance.

The legislative authority granted by the Trade Act of 1974 represents a positive and constructive vehicle for pursuing such negotiations and other appropriate and feasible steps to eliminate the restrictions that discriminate against and impair the ability of international accounting firms to render professional services in foreign countries.

ARTHUR ANDERSEN & CO.

January 6, 1976,

Chicago Illinois

Senator CHAFEE. Thank you.

Mr. KULLBERG. Mr. Chairman, I would like to make a remark in relation to this question you raised. There are certain other countries that I can think of immediately who have large surpluses in manufactured goods, who are also the most restrictive and difficult to deal with in the services industries. So at least by individual country there are reasons for their being more cooperative, if you will, in the direct or implied restrictions in the service industries.

Senator CHAFEE. Of course, they have got a lot to lose.

Senator ROTH. I wonder, would you name those countries?

Mr. KULLBERG. Japan is one I can think of off the top of my head, and the others are varying countries in continential Europe.

Senator ROTH. Thank you, gentlemen, very much. We appreciate your being here today.

Our next panel consists of Frank Drozak, who is president, Seafarers International Union; and Steve Koplan, legislative representative, AFL-CIO. And I am pleased to welcome my old friend Liz Jager of the AFL-CIO.

We would like to proceed, as we have in the past, with you summarizing your statements. We will of course include your prepared statements in their entirety. Mr. Drozak?

STATEMENT OF FRANK DROZAK, PRESIDENT, SEAFARERS INTERNATIONAL UNION, AFL-CIO

Mr. DROZAK. Mr. Chairman, because of the time limitation, I will ask permission to add some additional statements to my statement, if it will be permissible.

Senator ROTH. That will be appropriate.

Mr. DROZAK. We applaud this Subcommittee for its clear recognition of the role of services in our economy. We are encouraged by your recognition of the important growth in services as a part of our foreign trade. And we are especially pleased with your recognition that the U.S. Government has a proper obligation to protect American interests in the trade in services area.

There is no industry that is more supportive of a positive trade program than the maritime industry. It is—after all—cargoes moving overseas that propel much of our industry.

There are also few U.S. service industries that have suffered greater overall losses to foreign competition in the last few decades. In the years right after World War Two, we were carrying over half of our foreign trade in U.S.-flag ships. Today we are carrying a mere 3.6 percent. And that percentage is declining.

Since January of last year, the U.S. private sector deep sea fleet has declined from 537 ships to 502. In terms of employment, we have lost 2,300 jobs in the past 15 months. This is out of a total of less than 20,000 jobs.

It is not that less trade is moving in and out of this country. On the contrary, the volume of trade is greater than it was in the late 1940's. But it is moving increasingly on foreign flag ships.

National security factors alone dictate that we should take positive steps to reverse this trend. We do not, however, think that S. 2058 as drafted is the answer. In fact, it risks diverting our attention from the real problem—the lack of a clear commitment to action on the part of the past several administrations.

While the Trade Act of 1974 was written at a time when trade in manufactured goods was receiving most of the attention, we think that it gives the President more than enough authority to protect American interests—if he wants to. In fact, section 105 of the 1974 Act alone seems to offer adequate policy guidance. It says:

> If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under Section 101 and 102 shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.

One thing that is needed is a hardheaded, firm resolve on the part of the executive branch to use the laws presently on the books. As a matter of fact, in the absence of such resolve, we think S. 2058 may give the President too much authority.

It would speed us into negotiations before we understand the effect of such negotiations on our domestic economy. This country has barely begun to see that there is a problem. Judging by the editorials against protectionism that we see every day, it is safe to say that many influential people still do not see the problem. In any case, we are a long way from having the detailed understanding that should dictate our negotiating objectives. In addition, lumping diverse industries together in negotiations could do serious damage.

The President has yet to work out the details of his promotional program for the maritime industry. From what we've seen so far, it does not look as though the final program will significantly increase this country's shipping potential. Our experience tells us that bilateral agreements need to be very specific and have teeth to be effective.

We have already seen—with the U.S.-U.S.S.R. and U.S.-China shipping agreements—that bilateral agreements do not necessarily protect American interests. With those agreements, for example, failure to negotiate the proper rates has meant that U.S. operators have not built the ships to carry our share. We would like to see the Congress give specific instructions to the executive branch to negotiate bilateral, case by case, shipping agreements that are tied to the goal of increasing U.S. shipping capability.

We are very concerned that negotiations, like the ones proposed in S. 2058, would lead to a bargaining away of vital U.S. maritime programs already in place. We cannot allow this to happen. We would like to see this legislation reflect the intent of the Congress to preserve the Jones Act and the current cargo preference programs.

In summary, many of our service industries are hurting. At the moment, the administration seems unwilling to use its full authority in this area. This is inconsistent with its support of some of the product interests, especially the sugar industry.

Though we support the aims of S. 2058, we are opposed to the bill as presently drafted. We think it should specify that bilateral shipping agreements are a clear policy objective. Such agreements should be negotiated to guarantee that a definite percentage of our trade with a given trading partner would move on U.S.-flag ships.

We think the bill needs more work. In addition, its appearance at this time tends to distract us from the real problem. That is the need for Presidential action to protect and promote American interests in the international marketplace. We are all for seeing that other countries get their fair share. However, for too long, this country has been pursuing one-way free trade. The time has come to protect American industry.

Thank you.

Senator **ROTH**. Senator Chafee regretfully has to leave. I know he has at least one question he wants to ask you.

Senator **CHAFEE**. Yes, Mr. Chairman. I want to express to this panel and the next panel my regret that I have a longstanding engagement that I have to honor at noon. But I have looked over Mr. Koplan's testimony, and of course Mr. Drozak's, which we just heard, and it seems to me if I understand the testimony of both of you gentlemen correctly, you agree on the principal objectives of S. 2058, but you do not support it because you feel that the call for international services negotiations is premature and we need more time to study the problems that the service industries face before we enact this legislation.

Is that a fair summary?

Mr. **DROZAK**. Yes, sir.

Senator **CHAFEE**. Mr. Koplan, is that fair?

Mr. **KOPLAN**. Yes, sir, it is.

Senator **CHAFEE**. But it seems to me that that does not recognize the thrust of the legislation we are considering here today, since the bill does set up a work plan to study the problems faced by U.S. service industries and to figure out what we want in any international services agreement. And as Mr. Brock and others have testified, the negotiations on international services are not going to take place immediately.

So it seems to me that the enactment of this legislation reasons that we will begin the study of trade barriers in services and what we want in and when personal services agreement. Therefore, I cannot understand your objections to it.

Mr. **DROZAK**. Well, Mr. Chairman, if I may, based on maritime alone, for 30 years of these negotiations going on, the different States, maritime has been the one industry that has had to sacrifice where it comes to a bargaining point. Otherwise, if we are going to sacrifice in negotiations to get electronics or others, whatever the product we may be buying for it—maritime has been the least one on the totem pole.

That concerns me, that we need teeth in here. To say that maritime will be a part of these negotiations—now, I discussed this with Bill Brock several times on the matter. Bill Brock indicated to me he was not opposed to it, but he was not for it, either. He feels it will take too much time, it will be too much policing.

Well, if the maritime industry is worth having, then it certainly should be worth policing. And with the place where we are today, with less than 502 ships, losing 35 ships last year, and the issue of what has happened in the Falkland Islands, then certainly we ought to take a look at bilateral shipping agreements if we are going to import and export goods in and out of this country and become a service country, as so proposed by Bill Brock.

Senator **Chafee**. I see.

Mr. Koplan?

Mr. **Koplan**. Senator Chafee, I agree with President Drozak just said. I would note that the AFL-CIO appeared on March 1 before this subcommittee on the whole question of the U.S. approach to the 1982 meeting, this November meeting coming up. And I am looking at that testimony and I note that we commented at that time that the diverse industries in services do not add up to a whole sector that can be discussed in an entirety in global negotiations, and that neither the United States nor its trading partners has done enough homework to launch a global negotiation by starting working parties, to list trade barriers in services at the next GATT Ministerial meeting in November.

What we are saying is that a lot more needs to be done on the part of our Government before we consider going into a working party type of a meeting, and that is the problem that we have got.

Senator **Chafee**. I see.

Well, thank you very much, Mr. Koplan and Mr. Drozak.

Mr. Chairman, thank you.

Senator **Roth**. Thank you, Senator Chafee.

I apologize, Mr. Koplan, for interrupting.

STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION, AFL-CIO

Mr. **Koplan**. Thank you, Senator Roth.

I will not read my entire statement. I will ask that it appear in its entirety in the record. I will summarize it.

Senator **Roth**. Without objection.

Mr. **Koplan**. The AFL-CIO appreciates this opportunity to present its view on legislative efforts to help U.S. service industries gain proper access to foreign markets. We believe that under present law the President has authority to negotiate on these issues for each industry and should act now.

While S. 2058 properly draws attention to the problems of U.S. service industries abroad, we believe that a legislative call for international negotiations and a code on such a wide range of industries and issues is premature. The AFL-CIO believes that much more study of the problems of the U.S. service industries at home is necessary before legislation is enacted.

In testimony before the subcommittee last year, AFL-CIO President Lane Kirkland summarized AFL-CIO policies toward trade in services in this way:

> Services represent a huge combination of issues too long overlooked in trade policy. For U.S. banks, shipping companies, airlines, broadcasting, advertising, insurance and many other types of firms, the policy issues seem clear: discrimination against their foreign expansion calls for action by the U.S. Government.
>
> For many years, AFL-CIO policies have also called attention to effects at home. Seven out of ten U.S. jobs are now in "services." American seamen were the first to experience the export of service jobs after World War II. American air traffic has led to disputes that affect pilots, flight attendants and maintenance crews. The AFL-CIO does not want to see jobs in services—now the majority of jobs in the United States—traded away as manufacturing jobs have been.

The trade problems in services are specific and quite diverse. The problems of building and construction are not the same as the problems of entertainment. There are so many different types of perceived "trade barriers" that U.S. Government offices have made a list of "2,000 barriers to services," and this is far from exhaustive. Nor would everyone agree that all should be removed.

The effects on employment are also diverse. Even employment classifications are different nationally and internationally.

These differences make it absolutely essential that policies on general negotiations be based on the practical solutions for specific current problems so that the huge diverse service industries will not be lumped together inappropriately for some overall negotiations.

A commitment to overall negotiations in services, therefore, should await more specific solutions through bilateral negotiations and action in each service sector to solve American service problems in trade—both at home and abroad. While existing trade laws already provide authority to act and negotiate on services, the authority has not been used to get enough experience or solve enough real problems to give a realistic basis for this legislation's general call for negotiations.

Immigration policy is an integral part when services are discussed, in distinction to when products are negotiated. The United States does not want to give up standards for lawyers, doctors, accountants, nurses, electricians, et cetera. Services involve human beings. They are not tradeable digits.

But concessions that would be considered by service negotiators have not been examined and the impact on U.S. service industries at home has not been assessed. Even the condition of specific industries at home—such as shipping, airlines, motion pictures, et cetera—has not been assessed.

The dollar volume of the "services" account is not necessarily beneficial for U.S. workers. It may in fact be negative.

New codes and new issues should await specific efforts and specific actions to solve current problems. American industries need effective representation, both at home and abroad.

In our view, S. 2058 puts the cart before the horse by giving the administration a blank check to conduct negotiations on services. The United States cannot afford to fail in an area where America must win or lose its remaining political strength in the world. The United States needs action on specific problems now.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Koplan follows:]

STATEMENT OF STEPHEN KOPLAN
LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION
AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE, SENATE COMMITTEE ON FINANCE ON S. 2058, THE TRADE IN SERVICES ACT OF 1982

MAY 14, 1982

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> "For many years, AFL-CIO policies have also called attention to effects at home. Seven out of ten U.S. jobs are now in 'services.' American seamen were the first to experience the export of service jobs after World War II. American air traffic has led to disputes that affect pilots, flight attendants and maintenance crews. The AFL-CIO does not want to see jobs in services -- now the majority of jobs in the U.S. -- traded away as manufacturing jobs have been."

The four purposes of the bill are all important. First, the bill emphasizes the importance of services to the U.S. economy. But the fact that services employ more than 70% of all Americans and contributes more than two-thirds of our gross national product does not translate into any clear guide about the impact of negotiations abroad on service industries or future employment at home.

Secondly, the bill directs the Administration to raise the issue of an international services code at the 1982 GATT ministerial meeting. We believe that the Congress should understand what such a code would consist of before such direction is given.

Third, the bill provides for coordination and implementation of U.S. trade policy with regard to services. While the direction for consultation with the private sector is in the bill, there is no clear direction that the Administration study the problems U.S. industries have experienced from foreign service industries in this market, and the potential impacts on each industry of services negotiations.

Fourth, the bill seeks to insure that U.S. service industries continue to have free access to foreign markets. To accomplish this objective, the bill emphasizes the President's authority to take action against unfair practices "either at home or abroad which affect U.S. service industries." But we believe that many important existing regulations covering practices at home should be preserved. In short, we do not believe that removing all so-called trade barriers will necessarily benefit U.S. industries or employees at home.

The trade problems in services are specific and quite diverse. The problems of building and construction are not the same as the problems of entertainment. There are so many different types of perceived "trade barriers" that U.S. government offices have made a list of over "2,000 barriers to services," and this is far from exhaustive. Nor would everyone agree that all should be removed. Some examples of service barriers reported in the October 5, 1981, Wall Street Journal are:

- Australia won't let foreign banks open branches or subsidiaries.
- Sweden bars local offices of foreign companies from processing payrolls abroad.
- Argentina requires car importers to insure shipments with local insurance companies.
- Japanese airliners get cargo cleared more quickly in Tokyo than do foreign carriers.
- And, if a U.S. company wants to use American models for an advertisement in a West German magazine, it has to hire the models through a German agency -- even if the ad is being photographed in Manhattan.

The effects on employment are also diverse. The implications for service industries jobs for models and engineers, for bank employees and airline personnel are diversified. Fees and royalties, which are counted as payments or receipts for services in the balance of payments accounts, may be the result of employing personnel abroad and do not create U.S. jobs. In the same way, payments for foreign building and construction operations are counted as payments, but they do not create building and construction jobs in the United States.

Even employment classifications are different nationally and internationally. In the U.S. economic classifications, for example, building and construction employees are not classified as "service workers." They are classified as "goods producing" workers. Thus, the international "services" are not the same as "domestic services," where employees are concerned.

These differences make it absolutely essential that policies on general negotiations be based on the practical solutions for specific current problems so that the huge diverse service industries will not be lumped together inappropriately for some overall negotiations.

A commitment to overall negotiations in services, therefore, should await more specific solutions through bi-lateral negotiations and action in each service sector to solve American service problems in trade -- both at home and abroad. While existing trade laws already provide authority to act and negotiate on services, the authority has not been used to get enough experience or solve enough real problems to give a realistic basis for this legislation's general call for negotiations. To make America wait for another five years for the hope of global negotiations -- whatever they may mean -- will not address the need for specific problems in specific service sectors to receive adequate attention. Problems for airlines, shipping companies, credit card companies, telecommunications companies, etc., need solutions -- not global negotiations.

These are specific problems in services that have been multiplying both in terms of the effects on domestic industries and jobs and the effects on U.S. service industries when they try to operate abroad.

The airline industries' problems abroad need action now, for example. No new rights to foreign airlines in the U.S. should be given in exchange for "concessions" abroad. The U.S. has been hurt already by too many one-sided negotiations. But this problem is not effectively addressed by a call for global negotiations on some unknown quantity of unidentified "services." It needs to be addressed now.

Insurance problems need action now, and some have received it. But should the United States preclude any barriers to trade in services that would assure that the U.S. has an insurance industry while it seeks global solutions -- trading insurance for shipping? We think many of the problems can be solved now by positive action.

Immigration policy is an integral element when services are discussed in distinction to when products are negotiated. But the bill does not recognize this problem. As we have shown above, the issue of requiring that foreign nationals perform certain jobs is a major complaint of the U.S. service industries about barriers they face abroad. But a negotiation would affect immigration rules here and abroad to remove such "barriers." The U.S. does not want to give up standards for lawyers, doctors, accountants, nurses, electricians, etc. Services involve human beings. They are not tradeable digits.

Negotiations involve concessions, but concessions that would be considered by service negotiators have not been examined and the impact on U.S. service industries at home has not been assessed. Even the condition of specific industries at home -- such as shipping, airlines, motion pictures, etc. -- has not been assessed.

The United States cannot afford to urge all the rest of the nations to come to the table to negotiate on a code for services by proclaiming that the U.S. has a trade surplus in services. However, the dollar volume of the "services" account is not necessarily beneficial for U.S. workers. For example, the current account is in surplus from dividends on foreign investment and because the statistics report profits of U.S. industries (not necessarily returned to the U.S.) as a huge "surplus." That surplus gives the U.S. a weak bargaining leverage and diverts attention from, and delays or prohibits action on, specific current problems.

The bill does not draw attention to the kinds of employment already lost or jobs that will be gained or lost by expanded services internationally. Nor has there been any recognition that dollar volume of service transactions does not necessarily imply a proportionate relationship to gains in employment. It may in fact be negative. Particularly in high technology industries, the transfer of jobs to other countries may accompany "sales" of services.

The United States should, therefore, go to the ministerial meeting to examine how the GATT agreements are working and with the intention to assure the reciprocity that is implicit in the GATT and stated in U.S. law. New codes and new issues should await specific efforts and specific actions to solve current problems.

The U.S. needs to place temporary restrictions on harmful imports -- including those in services -- during this recession. It needs to vigorously enforce the reciprocity provisions of the Trade Act. The fashioning of new remedies to assure a strong and diversified U.S. industrial structure with growing service industries is essential for America's well-being, both at home and abroad.

American industries need effective representation, both at home and abroad. In our view, S. 2058 puts the cart before the horse by giving the Administration a blank check to conduct negotiations on services. The United States cannot afford to fail in an area where America must win or lose its remaining political strength in the world. The U.S. needs action on specific problems now.

Senator Roth. Thank you for your statement, Mr. Koplan.

First of all, let me point out that, although there are some disagreements on the specifics of any legislation, it seems there is considerable agreement on the general concept. As you may have noted in our earlier discussions, I think on the part of both those on the panel on this side, as well as the U.S. Trade Representative, there is no disagreement that much work remains to be done prior to any broad multilateral discussion.

I agree with you that you are dealing with a very complex, diverse situation, and that it would be foolhardy for us to proceed until we have firmly in place the basic information, data and positions we want to take. But would both you gentleman agree with me that it is important that we begin now to develop the kind of information that is necessary for future negotiations?

Mr. Drozak. I certainly agree. I think it is needed.

Mr. Koplan. So do I, Senator. I think my point is simply, there is no way that we see that such information can be developed between now and the time this legislation considers starting these working parties. We think that it is going to take quite some time to develop the information you are talking about.

Senator Roth. As Ambassador Brock pointed out, he would not anticipate negotiations for a considerable period down the road. He said he was expecting them to proceed within a 4-year period.

I would also like to point out that our legislation does provide both for the bilateral negotiations you seek as well as multilateral talks. I share your concern and agree that there are many areas where we may want to take action now, that it would not be in our interest to delay such action. But I would point out that the legislation does not preclude that action; instead, it gives a firm foundation for bilateral negotiations.

So in a sense does that not at least partially meet your concern?

Mr. Koplan. Well, Senator, not too long ago I testified on the subject of military offsets, for example. And in examining that problem, bilateral negotiations I think mean many things. You know, we are concerned that a bilateral negotiation, for example, not include trading one service industry for another during the course of the bilateral negotiation. And I found certainly in the area of the military offsets that that is a very common problem.

I guess what I am saying is that in terms of even a bilateral negotiation there should be specific guidance, we would hope, from the Congress, that the American people should know what a bilateral negotiation is going to consist of, and there should be some limits on the breadth of those negotiations.

Senator Roth. I would say—and this may be an aspect of the legislation we should examine—that whether we have multilateral or bilateral negotiations, I feel strongly that the negotiator, the USTR, should consult very carefully with Congress, with labor and with business. I initiated that action in the 1974 legislation. I think it is important that that be done now as well. And I would say I would broaden it beyond Congress. I think the negotiators throughout any negotiation ought to be consulting closely with those that impacted it or are affected by it.

Mr. Koplan. I appreciate your comments, Senator. I might also add that before we get into any negotiations abroad, a component of all of this has got to be an examination of the health or the problems of our specific industries, service industries at home. I think, in listening to the testimony this morning, there is an awareness of the fact that the data that we have in these areas are not complete.

Before we get into a negotiation where concessions are going to be involved, there should be more attention paid to the health of our industry here at home.

Senator **Roth**. I certainly agree that we have a lot of work that needs to be done to provide the basis for any multilateral negotiation. In the case of bilateral discussions, I can see that there may be situations where we would want to take action now. Already we see nontariff barriers being put into place which could have a very serious impact.

So that I would hope that in those cases where the situation requires it, if we adopt our legislation, the USTR would act quickly and affirmatively.

I would like to say that I agree with the point made in your prepared statement, Mr. Koplan, that there is no clear direction in the administration's study of the problem U.S. industries have experienced with foreign service industries in this market nor of the potential impacts on each industry of services negotiations.

If we are not clear on that point, I certainly subscribe strongly to your recommendation that these questions are essential parts of the basic information and data the administration must develop.

Mr. **Koplan**. Thank you, Senator.

Senator **Roth**. Well, gentlemen—lady and gentlemen, I appreciate your being here today. And as we proceed with this legislation, I would like and urge that we consult with you.

Thank you very much.

Our final panel consists of: Richard Hollands, vice president, broadcasting division, Wometco; Leslie Arries, president of Buffalo Broadcasting; Sheldon Cohen, former Commissioner, IRS; Kermit Almstedt, counsel for Wometco.

We also will have here with us David Robb, general counsel for the station CKLW, Windsor, Canada.

Gentlemen, I welcome you. Because of the lateness of the hour, I would urge that you summarize as briefly as possible your problem. Senator Moynihan in the earlier stages did touch upon this, and I appreciate your being here today.

Who will be the first?

STATEMENT OF KERMIT W. ALMSTEDT, COUNSEL TO WOMETCO ENTERPRISES, INC.

Mr. **Almstedt**. Thank you, Mr. Chairman. My name is Kermit W. Almstedt. With your permission, I would like to outline the problem that is presented before you this morning, and introduce the other members of the panel. We also will summarize our statements because of the lateness of the hour.

On my far right is Dick Hollands, vice president of the broadcasting division of Wometco Enterprises, licensee of television station KVOS, Bellingham, Wash., who will discuss the impact of the Canadian law on the U.S. border broadcasters.

Next to him is Les Arries, Jr., president of Buffalo Broadcasting and general manager of television station WIVB in Buffalo, N.Y. Mr. Arries will describe for the committee the negotiations with the Canadians which have attempted to resolve this issue and which have been unsuccessful because of Canadian intransigence.

Finally, next to me is Sheldon Cohen, former Commissioner of the Internal Revenue Service and presently special counsel to Wometco Enterprises. Mr. Cohen will discuss the use of the 301 process by the border broadcasters.

To put the legislation before this committee into perspective, Mr. Chairman, in 1976 Canada passed a law, the effect of which was to impose a 100-percent tariff on the sale of U.S. advertising services to Canadian businesses. In response U.S. border broadcasters sought to resolve the issue through negotiations with the Canadians. The negotiations failed. The Canadians were consistently intransigent on the issue.

Following these unsuccessful attempts to negotiate a compromise the border broadcasters brought a 301 complaint. As a result of that action two Presidents have determined that the Canadian law is unreasonable and unfairly burdens U.S. export trade in services. Both Presidents have agreed that Canadian intransigence on the issue justifies retaliation and have recommended passage of legislation. It was initially hoped that passage of mirror legislation would give the Canadians reason to negotiate on the issue.

Unfortunately the Canadians continue to be intransigent. However, the sad fact is that the United States has given Canada no reason not to be intransigent. Mr. Chairman, the Canadians must be made to realize that it is in their best interest to sit down and negotiate out the problem now.

The question is, how do you accomplish this? Senator Danforth, Senator Moynihan, and Ambassador Brock all indicated this morning in their statements that passage of S. 2051 as presently drafted probably will not bring the Canadians to the negotiating table. The Canadians themselves have said as much.

Therefore, stronger action has to be taken. It must be undertaken now.

Mr. Chairman, as you are well aware, this committee was responsible for developing section 301 of the Trade Act of 1974 as a means of resolving trade disputes and has always had a stake in the viability of the section 301 process. The viability of that process is at issue in this case. To date there have been approximately 24 proceedings under section 301. The border broadcast dispute is the only case where there has been a Presidential recommendation of retaliation. Therefore, it is vitally important that this committee and Congress uphold the viability of the 301 process by passing legislation that convinces the Canadians it is in their best interest to negotiate on the matter now. You can be sure that both U.S. exporters and our foreign trading partners are following carefully this issue to see if the Congress is serious about resolving foreign trade disputes.

[There is no prepared statement of Mr. Almstedt.]

STATEMENT OF U.S. BORDER BROADCAST LICENSEES BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE COMMITTEE ON FINANCE OF THE UNITED STATES SENATE ON S.2051

Friday, May 14, 1982

Submitted by
Preston, Thorgrimson, Ellis & Holman
1776 G Street, N.W., #500
Washington, D.C. 20006

* * * * * *

Mr. Chairman:

This statement is filed on behalf of 20 U.S. broadcast licensees whose stations are situated near the Canadian border. These stations are KVOS-TV, Bellingham, Washington; WIVB-TV, WGR-TV, and WKBW-TV, Buffalo, New York; WABI-TV and WVII-TV, Bangor, Maine; WAGM-TV, Presque Isle, Maine; WBRJ-TV, Superior, Wisconsin; WICU-TV, Erie, Pennsylvania; KXLY-TV, KREM-TV and KHQ-TV, Spokane, Washington; KTHI-TV, Fargo, North Dakota; WCAX-TV, Burlington, Vermont; WWTV-TV, Cadillac, Michigan; WWUP-TV, Sault St. Marie, Michigan; WROC-TV, and WHEC-TV, Rochester, New York; KIRO-TV and KING-TV, Seattle, Washington.

I. INTRODUCTION

These broadcasters have been significantly injured by Canada's unreasonable denial, through passage of legislation known as C-58, of a tax deduction for advertising placed by Canadian businesses with U.S. broadcasters. Indeed, since enactment of Canadian Bill C-58 in 1976, U.S. border stations have lost access to approximately $20,000,000 annually in advertising revenues from Canadian businesses. We appreciate this opportunity to explain to this committee the reasons for our injury and frustration that the issue remains unreasolved. Most importantly we will demonstrate our determination that this Congress can in fact finally resolve this problem.

We have worked patiently with the Congress and with both the past and present Administrations within the system established by Congress when it enacted Section 301 of the Trade Act of 1974. We have expended substantial amounts of time, effort, and money to pursue a solution within the Section 301 process.

We also have pursued remedies within the private sector, including offering to contribute to a Canadian program production fund. In return for exemption from C-58, each participating broadcast station would have contributed to a Canadian production a percentage of its annual revenues, after agency fees, from advertising directed primarily toward Canadian audiences and placed by Canadian companies. While we would have preferred a totally unencumbered open market for the sale of broadcasting advertising, we suggested the production fund as a realistic compromise. We presented it as a conceptual approach within which we would be willing to negotiate particular aspects. But at a meeting in April, 1980 between broadcasters representing the National Association of Broadcasters and the Canadian Association of Broadcasters, the Canadians flatly rejected the proposal and labeled it "insulting."

Two presidents have agreed that the Canadian law is an unfair and burdensome restraint on U.S. trade. Prominent members of Congress have sharply criticized the Canadian policy.[1/] Six members of the Finance Committee, including the chairman and ranking minority member, wrote to President Reagan urging him to use this dispute to send a clear signal that Section 301 cases aimed at eliminating unfair foreign trade restrictions on U.S. exports will be vigorously prosecuted. Representative William Frenzel, a member of the House Trade Subcommittee, characterized C-58 as "an obviously outrageous law" during a subcommittee hearing on October 28, 1981.

Yet despite a favorable Section 301 decision, despite the strong support of members of Congress, despite our efforts to settle the matter on an industry to industry basis, C-58 remains the law of Canada. We are frustrated, angry, and suffering from the impact of C-58. But also we are encouraged. We are encouraged by the determination to resolve this problem expressed in President Reagan's message to Congress of November 17, 1981. We are encouraged by the sponsorship of the mirror legislation by a distinguished and influential group of senators and representatives. We are encouraged by this hearing.

This statement will review the history of the border broadcast dispute, examine the response of the U.S. and of Canada, describe the impact of the Canadian law, discuss the underlying cultural issue, and suggest a framework for resolving the problem. Several representatives of the border broadcasters will elaborate in oral and written presentations on the impact of the Canadian law and our experience in working through the Section 301 process.

II. BACKGROUND

U.S. broadcast signals have been widely received in Canada since the early 1950s. Television signals are received over the air in comformity with the Canadian-U.S. Television Agreement of 1952, which allocated television channels between the two countries. Subsequently, Canadian cable television systems began to carry U.S. signals. This has enabled most residents of all major Canadian cities and many smaller cities and towns to enjoy high quality, publically demanded American broadcast programming.

The U.S. broadcasting industry developed much faster than its Canadian counterpart since the size of the American population justified greater financial investment by program sponsors in U.S. stations. Canadian viewers and Canadian industry benefited greatly from the rapid development of American broadcasting. Canadian viewers received quality U.S. programming at no direct cost. And as Canadians grew increasingly fond of watching American broadcast programs, the Canadian cable television industry developed rapidly to spread U.S. signals throughout Canada.

The U.S. border broadcast stations received no remuneration for the television and radio broadcasts Canadians were enjoying until Canadian advertisers recognized the popularity of American programming with Canadian audiences. Then they began purchasing advertising time on U.S. stations to reach Canadian audiences. The total dollar flow was small compared to the overall Canadian and U.S. television industry revenue base, but it became significant to the U.S. border stations, facilitating the provision of quality service to their American and Canadian audiences.

Since 1955 the broadcast station most severely affected by C-58 in terms of percent of revenues, KVOS-TV of Bellingham, Washington, has been liable for Canadian taxes on all its income from advertising revenues received from Canadian sources (based on a negotiated allocation between the two countries). The station also operated the largest full line film production enterprise west of Toronto until it was forced to dissolve this business at the end of December, 1977 to economize in the face of the severe adverse financial impact of Bill C-58.

The government of Canada has adopted several laws and regulations to discourage advertising by Canadian businesses on U.S. television and radio stations. The two most notable and most repugnant policies are commercial deletion and C-58.

Canada announced the practice of commercial deletion in 1971. Cable operators who picked up U.S. signals would be encouraged or required to delete the commericals carried by U.S. stations before transmitting the programming. The effect of this policy, had it been fully implemented, would have been to sharply curtail and probably eliminate advertising by Canadians on U.S. stations. One of Canada's most distinguished newspapers, The Toronto Globe and Mail, characterized commercial deletion as "piracy" in an editorial published in 1976.

In January, 1977, after negotiations conducted by Secretary of State Henry Kissinger, Canada suspended further implementation of commercial deletion and limited the practice to three cities, Toronto, Calgary, and Edmondton. Even so, it still restricts the ability of some U.S. broadcast stations, to market their advertising product in Canada. Commercial deletion remains particularly costly to several Spokane, Washington stations whose signal is relayed by microwave to Calgary area cable systems, some 450 miles to the north.

The respite provided by the understanding reached with Secretary Kissinger was short lived. The Trudeau Government proclaimed Bill C-58 into law in September, 1976. The law became fully effective in 1977 and has remained in place. The critical provision of this law provides:

> In computing income, no deductions shall be made in respect of an otherwise deductible outlay or expense of a taxpayer made or incurred after the section comes into force, for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcast undertaking.

The effect of this law has been to impose a 100 percent tariff on the export of U.S. advertising services to Canada. As the Vancouver Province explained, "Most corporations operate at roughly a 50 percent tax level. In the old days, if a company spent $1 to advertise on KVOS, 50 cents of it would be paid for by taxes, or rather the lack of them. Now the whole dollar comes out of the client's pocket." (June 30, 1977)[2/]

III. U.S. RESPONSE

The United States government responded quickly to this problem, and in September of 1977 the Senate adopted a resolution, introduced by Senator Moynihan and 16 cosponsors on April 26, 1977, calling on President Carter to "raise with the Government of Canada the question of impact of the recent provision of the Canadian tax code on the U.S. broadcasting industry with a view toward adjusting outstanding differences." (S. Res. 152). The State Department told the Foreign Relations Committee it intended "to keep this matter and its adverse impact on U.S. broadcast interests before the Canadian Government as opportunities to do so arise." (Sen. Report No. 95-402)

Various high level government contacts between Canada and the United States have included discussions of this issue. It has been raised in the context of negotiations on a new tax convention between the U.S. and Canada, at various interparliamentary group meetings, at meetings between high level cabinet and subcabinet officials, and even at the Presidential level. On May 23, 1978 the U.S. sent a formal diplomatic note to the Canadian government protesting the unilateral imposition of broadcast controls via Bill C-58. Canada has consistently and bluntly rejected all U.S. requests for serious negotiations.

From early 1977 to late 1980, Bill C-58 was a significant factor in the refusal of Congress to modify the Tax Reform Act of 1976 to provide a North American exemption from the restrictions on tax deductibility of expenses incurred in attending business conventions held in foreign countries. For example, on April 27, 1977, the Senate rejected such an amendment by a vote of 43 to 45. Similarly, the House Ways and Means Committee reported H.R. 9281 in the fall of 1978 with an amendment that a North American exception to the foreign convention provision should not apply to Canada as long as C-58 continued in effect.

On December 13, 1980, Congress passed H.R. 5973 which revised the tax treatment of the expenses of attending foreign conventions. The law includes a special exemption for Canada and Mexico from restrictions applicable to conventions held in other foreign countries. That privilege was granted to Canada only after Representative Barber Conable urged Canada to reciprocate the goodwill demonstrated by Congress by being more forthcoming on the C-58 issue and eliminating the discrimination against U.S. television stations.[3/]

Canada has ignored Mr. Conable's request and remains intransigent on C-58.

Although the U.S. negotiators raised C-58 during negotiations on the bilateral tax convention between the U.S. and

Canada, they were unsuccessful in pursuing the matter. Chairman Percy of the Committee on Foreign Affairs questioned the Treasury Department during hearings on the tax treaty last September about the Canadian intransigence on C-58 during the aforementioned negotiations. Subsequently, Chairman Dole, in a letter to Senator Percy, expressed disappointment that the treaty ignores this issue and urged the Foreign Relations Committee to include the need for its prompt resolution in weighing whether to report the treaty favorably. Senator Dole stated:

> It is unfortunate whenever a tax treaty, particularly one with a developed country, fails to resolve tax discrimination problems between the treaty partners. The dispute with Canada over C-58, Canada's indirect tax discrimination against U.S. broadcasters, is exactly the sort of dispute it was hoped the new Canadian treaty would resolve. I am disappointed that the new treaty, at the insistence of the Canadians, ignores this dispute.

The failure, at least so far, to resolve C-58 in as logical and appropriate a context as the tax treaty negotiations, further illustrates the unreasonable intransigence of the Canadians and explains some of the frustrations felt by the U.S. broadcasters.

IV. SECTION 301 CASE

Nearly four years ago, on August 29, 1978, fifteen U.S. border broadcast stations filed a formal complaint under Section 301 of Trade Act of 1974 with the then Special Trade Representative.[4] Eight other stations, though not signatories to the formal complaint, filed comments in the 301 proceeding stating their concurrence in the charge that C-58 was an unfair trade practice. The complaint alleged that C-58 was discriminatory, unreasonable, unjustifiable and burdened U.S. commerce. In November 1978 the STR held hearings on the complaint at which Canadian broadcasters appeared in opposition. The Canadians argued that Section 301 did not encompass trade in services such as border broadcast advertising. In 1979 Congress amended Section 301 and thereby removed any legal argument as to the applicability of Section 301 to border broadcast advertising service. The 1979 amendment also introduced a one-year statutory deadline for resolution of Section 301 complaints.

In February, 1980 the U.S. Trade Representative informed the Canadian government that a final resolution to the complaint must be reached before the statutory deadline of July, 1980. On July 9, 1980 the USTR held hearings on possible remedies. Two distinguished members of this committee, Senators Heinz and Moynihan, submitted testimony on behalf of the broadcasters. The broadcasters suggested that the President select a combination from among four remedies: duties or quantitative restrictions on exports of Canadian feature films and records to the U.S.; mirror image legislation; continued linkage to the foreign convention issue; and general linkage to other U.S.-Canadian interests. Again Canadian broadcast interests testified.

On July 31, 1980, President Carter, after considering the recommendation of the USTR and the evidence developed in the extensive investigation and hearings, determined that the

Canadian tax practice embodied in C-58 "is unreasonable and burdens and restricts U.S. commerce within the meaning of Section 301."

On September 9, 1980, more than two years after the filing of the Section 301 complaint, President Carter sent a message to Congress calling for the enactment of mirror image legislation. The 96th Congress did not have time to consider the proposal.

President Reagan, recognizing that the remedy proposed by President Carter had died with the 96th Congress, reviewed the case and resolved to solve the problem. After thorough study and careful consideration within several agencies and departments, President Reagan issued a message to Congress about C-58 on November 17, 1981. After noting that a good-faith effort by the USTR had failed to eliminate the offending practice, President Reagan recommended legislation similar to the amendment proposed by President Carter. This so-called mirror bill would deny an income tax deduction for the expense of advertisements placed by U.S. businesses with a foreign broadcast undertaking and directed primarily to a market in the U.S.

Most significantly, President Reagan recognized that this amendment by itself may not cause the Canadians to resolve this dispute. He noted his right to take further action to obtain the elimination of C-58 on his own motion under the authority of Section 301(c)(1). The border broadcasters welcomed President Reagan's determination to solve this problem. We understand that mirror legislation by itself will not be enough. We are fully aware that stronger action by Congress and the President are necessary or our efforts during the last four years to work within the Section 301 process will have been wasted. Several of our witnesses will elaborate on the patience we have demonstrated and the frustration we have felt in using the 301 process. We urge this committee to use this case, a case endorsed by two Presidents, to demonstrate to other U.S. service industries and to our trading partners that Section 301 can be made to work.

V. CANADIAN RESPONSE

The Canadian government consistently has been intransigent on C-58. Even before the Parliament enacted the bill, Canadian officials adamantly refused to discuss with the United States the strenuous objections of the State Department. United States Ambassador Thomas Enders took the American case to Parliament during its debate on C-58, asking for negotiations to attempt to reconcile the interests of both countries. Although the Canadian Senate Banking Committee proposed conciliatory amendments to Bill C-58, the Canadian Senate rejected those recommendations after intense public debate.

The stated Canadian goal is to keep advertising revenues in Canada to develop its film and broadcast industries. The Canadian government claims to view the matter as a cultural issue and seems to believe the issue represents so few dollars in the mix of Canada-U.S. trade that Canada can succeed by simply refusing to negotiate.

The Canadian government has ignored the recommendation of a commission it established in 1978 to develop a strategy to restructure the Canadian telecommunications system to help safeguard Canada's sovereignty. After analyzing the border broadcast situation, this commission, the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty, concluded:

> The treatment of the U.S. border stations by Canada has created serious friction between the two countries, which could result in retaliatory measures in other fields of enterprise, and it is clear that there can be no solution that would satisfy the interests of all parties. The subject has been a matter of discussion between officials of the Canadian Department of External Affairs and the U.S. State Department, and in 1976 Canada made proposals for, inter alia, a bilateral treaty on cross-border advertising, but these were unacceptable for the United States. At this point we should like to quote from the brief submitted to us by the U.S. border stations:
>
> > . . . we urge that the problems of the Canadian broadcasting system (in this particular matter) can only be resolved in the context of an amicable understanding between the two countries.
>
> We concur in this statement.

The Commission recommended that:

> The federal government should renew the discussions with the United States with a view to resolving the border television dispute at an early date.
> (Telecommunications and Canada, 45-46 (1979))

More recently, both the legitimacy and the success of the Canadian policy have been questioned by Canadians. One of the most prominent Canadian cable company executives, Edward Rogers, has called for a review of Bill C-58 by the Canadian government. Referring to Bill C-58 and simultaneous substitution (a policy which requires cable operators to blank out the U.S. signal and substitute the signal of local Canadian stations when a U.S. station broadcasts the same program at the same time), Rogers stated:

> Right now the broadcasters have got their increased cash flow from these restrictions - but the increase in program choice and the deregulation of optional and discretionary services has not been forthcoming.
>
> Bill C-58 should be reviewed by the Canadian government. It has caused great misunderstanding in the United States. Yet there has never been a public accounting by the privileged few companies who financially benefited from this very sensitive legislation. There should be such a public accounting and soon. If the cash flow gains to these relatively few private companies is not going to produce enhanced Canadian programming - then the bill should be repealed. (Speech to Annual Meeting of Shareholders of Canadian Cable Sytems Ltd., January 26, 1981)

The Canadian press also has been critical of C-58.[5/] In an editorial headlined, "Heads We Win, Tails Too," the Toronto Globe and Mail criticized the Canadian attitude that produced C-58. The editorial concluded:

> Canada can bluster all it wants about U.S. pressure tactics, but it does so on very shaky moral grounds. Either we recognize that both sides can play at protectionism, and accept the game on those terms, or we should simply stop imposing protective policies.
>
> The United States is not about to let us have it both ways - and, more to the point, we don't deserve to. (July 24, 1980).

The Hamilton, Ontario, Spectator denounced C-58 as piracy in an editorial published on July 15, 1980. It stated:

> The objection the U.S. stations have is valid. Canadian cable-TV companies are, as charged, pirating U.S. programs and inserting Canadian commercials. In essence, they are robbing the U.S. networks and stations. Because the 1975 tax law doesn't allow Canadian advertisers to deduct the cost of advertising on a U.S. station if that advertising is aimed at Canadians, the cable companies are getting paid for pirating U.S. programs because Canadian advertisers buy time from the cable companies.
>
> * * *
>
> And piracy is piracy. If U.S. cable companies were doing the same as the Canadian companies are, Canadians would complain even louder than they do already.

VI. IMPACT ON U.S. BROADCAST STATIONS

President Carter found that Bill C-58 "denies the U.S. border broadcasters access to a substantial portion of the advertising market in Canada, amounting to approximately $20 to $25 million annually, to which they previously had had access." (45 F.R. 51173). The implementation of Bill C-58 has reduced by at least two-thirds the cross-border advertising revenues of U.S. television stations.

Total Canadian advertising revenues derived by U.S. television stations dropped by approximately 50 percent from 1975 to 1977; from $18.9 million in 1975, the last full year before implementation of Bill C-58, to $16.8 million in 1976, and to $9.2 million in 1977. Canadian expenditures on border stations declined further in 1978, to a total of $6.5 million.[6]

A study undertaken for the Government of Canada indicates that Bill C-58 had reduced the cross-border flow of advertising by about $23 million annually by 1978. The study projected that there would have been $29.5 million of advertising placements in 1978. By subtracting the actual cross-border flow of advertising, the study obtained the estimated loss of advertising ($23 million).

Apart from the loss in annual advertising flow is the decline in the asset value of the U.S. stations along the Canadian border due to Bill C-58. The $23 million decline in advertising flow may have reduced the asset value of such stations by a multiple of three, or $69 million. This reflects the rule of thumb in broadcasting that the asset value of a station is approximately three times the level of annual advertising proceeds.

Bill C-58 also applies to radio broadcasters. Due to apparent laxity in enforcing Bill C-58, the impact on some U.S. radio stations has been delayed. However, a broadcaster in Calais, Maine whose station is the only broadcast outlet for neighboring St. Stephen, New Brunswick, conservatively estimates that he will lose $100,000.00 annually on the basis that approximately one-third of his advertisements are directed primarily at Canadians by Canadian businesses. Several of the witnesses will discuss how C-58 has affected their stations.

VII. SOLUTIONS

The border broadcasters appreciate the deep concerns about national identity and cultural sovereignty that underly Canadian policies such as Bill C-58. But such concerns do not justify a policy so pointedly unfair and one-sided.

Moreover, it is difficult to understand how Bill C-58 reduces the U.S. cultural presence in Canada. It does not affect in any way the ability or predisposition of Canadians to watch the American programming of U.S. television stations. As the Hamilton Spectator observed in its editorial of July 15, 1980:

> It's one thing to build up pride, to persuade people that a Canadian TV show or a Canadian product is a good buy. That's legitimate in any free-market system.
>
> It's quite another to legislate so that consumers have no choice about what they may or may not purchase, watch or otherwise consume.

The Canadian government apparently has begun to recognize the potential for using profits from popular American programming to develop the Canadian broadcast industry. This concept is implicit in the current proceeding to award licenses for pay television service in Canada.[7] Supporting Canadian production rather than unilaterally handicapping popular U.S. stations is reasonable. Given the substantial demand for programming generated by cable television, significant opportunities exist for marketing of Canadian programming in the U.S. We welcome such a free flow of programming between our countries. As broadcasters, we are highly sensitive to the cherished values we attach to the free flow of communications. Unilateral obstacles to this free flow, such as C-58, are a particularly repugnant form of trade barrier.

The issue before this Committee today is how to convince Canada that C-58 must be repealed. We fully recognize that the mirror bill (S.2051) will have a limited impact, probably at the lower end of $2 to $5 million of revenue lost to Canadian broadcasters. The prospect of such a law has been proven insufficient to move the Canadians. Therefore, we urge this Committee to use the mirror bill as a vehicle for taking stronger action.

When Senator Danforth, chairman of this Subcommittee, introduced S. 2051 he stated, "It may be necessary to review the recommended remedy at a later date to insure that it is strong enough to persuade Canada that Congress intends to support fully our export industries in the face of discriminatory foreign trade practices." That later date is now. Mirror legislation must be expanded-upon. We suggest that congressional action include the following elements:

1. The U.S. action should symbolize to Canadians that C-58 is unfair and not in the long term interest of the two nations' trade relations.

2. The U.S. action should further symbolize that the Congress and the Administration remain strongly committed to the successful utilization of the Section 301 process.

3. The U.S. action should isolate the C-58 issue from other "larger" U.S.-Canadian trade issues;

4. The action should remain sectorally limited to telecommunications issues.

5. The action should be aimed at generating substantial Canadian domestic economic pressure on the Canadian government, preferably from the same Canadian interests which have traditionally supported C-58.

6. The U.S. action should be simple and straightforward but have the effect of gradually becoming more serious in its Canadian impact to heighten the domestic political consequences for the Canadian government the longer it fails to act. Hence the action would not support any Canadian contention that the U.S. has raised the issue to the level of a trade war.

We hope that during the hearing the Committee will explore possible measures which meet these guidelines.

We believe our case provides Congress and the Executive Branch an opportunity to establish two principles of effective trade policy. First, we must stand up to unilaterally imposed, offensive foreign trade practices which unfairly handicap U.S. service exports. Second, recognizing that we have patiently relied on Section 301, the process established by Congress for resolving trade problems, this case presents an opportunity to establish the viability of Section 301, particularly for U.S. service industries.

While we fervently hope that congressional action against C-58 will lead to the removal of this discriminatory trade barrier, until such time the U.S. government should be wary of extending any special favors or benefits to Canada. In this regard, twelve border stations recently filed comments in the

Federal Communications Commission proceeding to authorize the transmission of teletext by TV stations. These stations urged the FCC to "take the opportunity presented by this rulemaking to warn foreign governments, particularly the Canadian government, that the U.S. expects reciprocal openness to their telecommunications markets .... There is no special obligation to Canada since Canada has not treated U.S. broadcasters fairly."[8/]

Finally, we agree with the statement made by former Canadian Ambassador to the U.S. Peter M. Towe last fall. He said:

> These problems - ours and yours - will not be solved by mere finger pointing, much less exaggerated claims and counterclaims. We must strengthen our commitment at the highest level to finding appropriate solutions. (Cong.Rec. S12647, October 30, 1981).

VIII. CONCLUSION

We think that the Chairman of this Subcommittee aptly summarized our situation when he introduced S.2051:

> In the face of our declining balance of trade, it is crucial that Congress stand behind American export interests. The communications industry is one of our important service industries and the service sector is becoming an increasingly important growth area on our export ledger. Thus, it is vitally important that we reenforce one of the few legal mechanisms which U.S. service exporters can invoke to gain relief from foreign trade barriers.

The mirror bill alone is not enough. We urge this committee to expand its effect. It is time to resolve this dispute in a manner consistent with findings by two Presidents.

FOOTNOTES

1/ Appendix A contains copies of several Congressional statements.

2/ A copy of this editorial is attached to the statement of Dick T. Hollands.

3/ A copy of his remarks is contianed in Appendix B.

4/ The fifteen United States television licensees who filed the original § 301 complaint on August 29, 1978 were:

KVOS Television Corporation, licensee of station KVOS-TV, Bellingham, Washington;

Buffalo Broadcasting Co., Inc., licensee of station WIVB-TV, Buffalo, New York;

WPBN-TV and WTOM-TV, Inc., DBA Midwestern Television Company, licensee of station WPBN-TV, Traverse City, Michigan;

Eastern Maine Broadcasting System, Inc., licensee of station WVII-TV, Bangor, Maine;

WDAY, Inc., licensee of station WDAZ-TV, Grand Forks-Devils Lake, North Dakota;

Great Lakes Television Co., licensee of station WSEE-TV, Erie, Pennsylvania;

Johnson Newspaper Corporation (formerly known as The Brockway Company), licensee of station WWBY-TV, Watertown, New York;

Spokane TV Inc., licensee of station KXLY-TV, Spokane, Washington'

Spokane TV Inc., licensee of station KTHI-TV, Fargo, North Dakota;

KMSO-TV, INC., licensee of station KCFW-TV, Kalispell, Montana;

Advance Corporation, licensee of station KFBB-TV, Great Falls, Montana;

International Television Corp., licensee of station WEZF-TV, Burlington, Vermont;

KXMC-TV, Inc., licensee of station KXMD-TV, Williston, North Dakota; and

KXMC-TV, Inc., licensee of station KXMC-TV, Minot, North Dakota.

5/ See Appendix C

6/ Arthur Donner and Fred Lazar, *An Examination of the Financial Impacts of Canada's 1976 Amendment to Section 19.1 of the Income Tax Act (Bill C-58) on U.S. and Canadian TV Broadcasters*, January, 1979, at p. ii.

7/ See Canada Chooses First Licensees for Pay TV, Broadcasting, (March 22, 1982) 32.

8/ Comments of Border Broadcast Stations in BC Docket No. 81-74, In *re* Amendment of Part 73 to authorize the transmission of Teletext by TV stations.

STATEMENT OF DICK HOLLANDS, VICE PRESIDENT, BROADCASTING DIVISION, WOMETCO ENTERPRISES, INC., LICENSEE OF TELEVISION STATION KVOS, BELLINGHAM, WASH.

Mr. HOLLANDS. The purpose of my testimony this morning is to outline the effect of bill C-58 on KVOS-TV, located in Bellingham, Wash. KVOS is the border station which has suffered the greatest loss of all border stations because, just as a matter of geography, a higher proportion of viewers of KVOS are Canadian than any other U.S. station.

First of all, I want to emphasize that we are a highly viewed station in Vancouver and Victoria, British Columbia. Because of the requests and interest of the Canadians, and at the urging of the viewers and the advertising agencies of British Columbia, KVOS moved its transmitter in 1954 to provide a better picture to Vancouver and, I might add, to Bellingham and to Whatcom County as well.

Shortly thereafter KVOS established a Canadian subsidiary—KVOS-TV(B.C.) Ltd.—and through this tax presence has paid Canadian taxes on all income generated from Canadian sales since 1955.

Later, we recognized the desire of the Canadians to have more programing for television and other media produced in Canada, so we set up Canawest Films in Vancouver. At its peak Canawest employed over 100 part-time and full-time employees, and produced animated features, documentaries, and television commercials. Directly as a result of the adverse impact of C-58, this enterprise was abandoned in 1977.

My prepared statement describes the financial effect of C-58 on KVOS. It is very substantial. I would like to now focus on what C-58 has done to the very competitive viability of KVOS. Given a signal capable of covering a specific geographic area, in which there are a certain number of potential viewers, a television station's job is to program that station so as to attract viewers. If the station is successful, then advertisers will find it useful to purchase commercial time. That is the way the television industry is supported in this country and in Canada.

Let's examine the impact of bill C-58 on this process. A 30-second commercial on KVOS, which might command in the marketplace $100 from a Canadian advertiser, must be discounted by KVOS because the Canadian Government will not allow a tax deduction to the Canadian advertiser. Therefore we receive approximately $50 of that $100. Our competitors in Canada for the same or similar spot would receive the full $100.

If a television program is then offered for sale in the Vancouver/Bellingham marketplace, there is no way in which KVOS can compete with its fellow stations to the north, since the potential revenue that KVOS can get from that program is only about half of the others. Therefore, KVOS cannot compete effectively in this open market for programming and as a result KVOS viewers, both those in Canada and in the United States, suffer and the value of the station is diminished.

I should point out that C-58 is a controversial issue in Canada. By no means do all Canadians agree that it is a just and reasonable proposition. Insofar as we can see, it has failed to achieve its stated objective of providing more Canadian programing or Canadian production. What it has done is hurt KVOS, helped our competitors, and provided more taxes to Revenue Canada.

Along with other border broadcasters, we tried to negotiate this issue over the years without success. We have been told by two U.S. Presidents and virtually every group that has studied this matter that we are right, that this is unjust and unreasonable. And yet, there is no relief after 6 years.

That is why we ask this committee to take action which will finally resolve this inequitable and damaging situation.

[The prepared statement of Mr. Hollands follows:]

STATEMENT OF DICK T.HOLLANDS
VICE PRESIDENT, WOMETCO ENTERPRISES, INC.
BEFORE THE SUBCOMMITTEE OF INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
OF THE UNITED STATES SENATE
ON S.2051

Friday, May 14, 1982

* * * * *

My name is Dick T. Hollands, and I am Vice President, Broadcasting Division of Wometco Enterprises, Inc., the parent company of KVOS Television Corporation, which is the licensee of KVOS-TV in Bellingham, Washington. I appreciate the opportunity to testify before this Committee to discuss the history of KVOS-TV's involvement in border broadcasting and describe the disastrous effects of Bill C-58 on KVOS-TV.

The service of KVOS-TV in Canada is incidental to our primary market, (Bellingham, Washington,) and at the request of

Canadians. While we are licensed by the Federal Communications Commission to serve Bellingham and other markets in Washington State, our signal is received in Canada in conformity with the Canadian-U.S. Television Agreement of 1952, which allocated television channels between the two countries.

Since 1954 Canadians have wanted to make use of our signal. In 1953 KVOS-TV went on the air with a small, low-power homemade transmitter on a hill within the city limits of Bellingham. The station was intended to serve only the local and regional viewers of northwestern Washington.

After a year of operation it became apparent that British Columbia viewers and advertisers needed an additional TV outlet. They urged KVOS-TV, by letters, phone calls, and personal meetings, to eliminate the deep ghosts in our signal caused by the Bellingham transmitter location.

Representatives of several Vancouver advertising agencies, as well as potential viewers, suggested to KVOS-TV that it shift its tower to permit a clear signal to be provided to British Columbia viewers. Existing demand for television advertising could not be filled by the province's only television station, a Canadian Broadcasting Corporation (CBC) venture in Vancouver.

As a result, in late 1954 KVOS-TV moved the transmitting tower to its present location on Orcas Island in the State of Washington, a location that was much closer to Vancouver and Victoria, British Columbia. The Federal Communications Commission approved the move which was made in conformity with the Canadian-U.S. Television Agreement of 1952. Neither the Canadian Government nor the private sector objected.

The station incorporated a Canadian subsidiary corporation in British Columbia in 1955 to handle its Canadian business, KVOS-TV (B.C.) Ltd. Canadian tax authorities agreed to use a tax base similar to that devised for Canadian radio station CKLW's U.S. sales corporation in the Detroit-Windsor area, which for many years has sold commercials purchased by American advertisers. I would like to emphasize that as a result of this "tax presence" KVOS-TV (B.C.) Ltd. has paid Canadian taxes on all of its income from advertising revenues received from Canadian sources since mid-1955.

In 1961 Wometco Enterprises, Inc. purchased KVOS from its original owners. Like any other business making a major investment, we hoped to make a profit on the transaction. We assumed the risks of the free market. We hoped that viewers receiving our signal would like the product and that we would have an opportunity to compete for advertising dollars in the marketplace. We did not believe that a developed country like Canada, with extremely close bilateral relations with the United States, would enact discriminatory policies against our country, or, if that occurred, that the U.S. Government would not object in an appropriate manner. I want to emphasize that we have attempted to play a responsible role in the development of British Columbia and the program production industry of Canada.

KVOS-TV (B.C.) Ltd. has been staffed by Canadian citizens and residents and has systematically reinvested substantial amounts of profits in British Columbia. In the ten-year period from 1965 to 1975, KVOS-TV (B.C.) Ltd., and related ventures made possible through reinvestment, injected more than $75 million into the Canadian economy as, among other things, taxes, payroll, and operating expenditures and capital expenditures.

KVOS-TV (B.C.) Ltd. also contributed to the program production industry in Canada by establishing and subsidizing what was, until 1977, the largest full-line film production enterprise west of Toronto. Located in Vancouver, Canawest Film Production was unfortunately dissolved on December 31, 1977 because of the severe adverse impact of Bill C-58 on KVOS-TV (B.C.) Ltd.

From 1965 through 1975, KVOS-TV and Canawest provided employment and creative opportunities for more Canadian actors, writers, directors, producers, animators, artists and other skilled production people than any other nongovernment owned station or film production company in Canada west of Toronto. The film products from its animation facilities and its documentary studios won many major Canadian and U.S. awards. Canawest also won awards as a producer of television commercials.

The company at full capacity employed more than 100 full-time and part-time people. Operating expenses in 1976 were about $400,000; the company essentially broke even.

In 1977, Canawest was awarded a "best film produced in Canada" award for the film "Under the Polar Star." In producing this documentary for the Idaho-based Morrison-Knudson firm, Canawest brought American revenue to Vancouver, as it did in many other production jobs using Canadian talent on films which otherwise would have been made in the United States.

After we announced that regrettably the enactment of C-58 would force us to close Canawest, the Vancouver Province reported:

> With irony peculiar to Canada, the legislation that killed the company was supposed to nurture the kind of work it has been doing since 1961.
>
> * * *
>
> The only way for Channel 12 [KVOS] to stay competitive was to cut expenses--and rates for commercials--and Canawest was an expensive, expendable showpiece of good corporate citizenship. 1/

We do not believe that at any point along the line we made a mistake in judgment. We believe in the free cross-border flow of telecommunications and have consistently supported that policy. Unfortunately, Canada's enactment of Bill C-58 undermined not only that policy, but also seriously injured the broadcasting operations of our station.

KVOS-TV has been more seriously injured by Bill C-58 than any other U.S. station, in terms of gross revenue lost. In 1975 Canadian revenues accounted for about 90 percent of total KVOS revenues. Our gross revenues declined from $7.4 million (Canadian) in 1975 to $4.1 million in 1977 -- a decline of about $3.1 million. Net revenues declined from $6.1 million in 1975 to just under $3.6 million in 1977. Since 1976 the Vancouver television advertising market has grown (as have most TV

1/ A copy of this article is attached as Appendix A.

markets), inflation has taken place, and the value of the Canadian dollar has declined relative to the U.S. dollar. Our best estimate in round figures is that KVOS has lost, as a result of C-58, $20 million in gross revenue (Canadian) cumulatively from 1976 through 1981. This translates into nearly $16 million net loss after sales and agency commissions.

The main beneficiary of our dollar loss has been Revenue Canada, the Canadian equivalent of IRS. That's because we discount our sales to Canadian advertisers by whatever their tax rate is so that they in turn may pay those dollars directly to the government in taxes. Thus, what began in the noble name of protecting the Canadian character from being defiled by Americanization has worked out to be simply another means of producing revenue.

In order to survive, KVOS-TV has taken a number of steps to minimize the impact of Bill C-58. KVOS-TV eliminated from its nighttime prime time schedule its CBS network programming, which had included CBS commercials, thereby doubling its inventory of available spots, and programmed at considerable expense as an alternative independent station. (Fortunately, CBS has been a most sympathetic associate.) KVOS-TV cut its advertising rates by 46 percent -- the average tax cost of major Canadian companies -- and mounted an intensive sales campaign to agencies and clients across Canada. Finally, KVOS-TV (B.C.) Ltd. phased out Canawest Film Productions in 1977.

Unfortunately, none of these figures describe adequately the tremendous impact C-58 has on the ability of KVOS to compete in the marketplace to provide quality programming to our viewers. Let me explain.

For a television station to be successful it must be able to attract audiences which advertisers want to reach. It can do this only if it can purchase programs that will be of interest to its audiences. These programs are purchased through the revenue generated from advertisers. Anything that adversely affects a station's ability to generate revenue from advertisers necessarily affects adversely its ability to attract audiences. And when a station competing against others faces limitations not faced by its competitors, it is placed at an untenable competitive disadvantage.

For example, the five stations serving the Bellingham/Vancouver/Victoria television market all compete directly for the same programming and for the same viewers. Any of these stations can buy syndicated programming only if it is the highest bidder for that programming. C-58 makes it virtually impossible for KVOS to be the high bidder since it forces KVOS to set advertising rates at about one-half those charged by its Canadian competitors, thus reducing by nearly 50 percent the amount of revenue which KVOS can generate to purchase programs.

In short, C-58 eats at the guts of a station like KVOS. Its ability over the long term to compete is further and further eroded. And the impact falls not only on the station. It falls heavily on U.S. citizens who depend on KVOS for information about their community, state and country, and are unable to obtain as much information as they would like and otherwise would be able to receive because the resources to provide that information are simply no longer there.

For the past six years KVOS and the residents of the greater Bellingham, Washington area have been unfairly penalized and gravely injured by operation of Bill C-58. It is time that the U.S. Government took action to resolve this fundamental inequity.

APPENDIX TO STATEMENT OF DICK T. HOLLANDS

[From the Vancouver Province, Thursday, June 30, 1977]

CANAWEST GOING, BUT NOT FORGETTING)

(By Michael Bennett)

(Canawest Films earned a reputation for adventurous documentaries, innovative commercials and emergency animation in the last 15 years as the KVOS–TV production company. The Time-Reader's Digest legislation left it vulnerable, and, regrettably, expendable.)

The credits read like an obituary for some forgotten Hollywood studio interred beneath a shopping plaza somewhere off La Clenaga Boulevard: The Beatles, Abbott and Costello, and Walt Till Your Father Gets Home televison cartoons, a syndicated series called The Canadians, the best English-language commercial in the country (1968), an ABC Mystery Movie, Canada's equivalent of an Oscar for a film called Way of Wood that was shot in five languages.

The mourning this time, though, isn't on the passing of Republic Pictures of another age. It's merely a dress rehearsal, because the largest commercial film producer north of Los Angeles and west of Toronto won't be clinically dead until New Year's Eve.

Canawest Films is still warm, winding down the years of bizarre adventure and equally confounding relations with the federal government. With irony peculiar to Canada, the legislation that killed the company was supposed to nurture the kind of work it has been doing since 1961.

As a Canadian subsidary of KVOS–TV in Bellingham, which in turn is owned by the bottlers of Coca-Cola, Canawest got caught in the hysteria of the Time-Reader's Digest debate—which somehow equated cultural sovereignty with advertising revenue * * *.

Unfortunately, KVOS was lumped in with three stations beaming into Toronto from Buffalo (without so much as a dummy corporation registered in Ontario) when the House of Commons committee decided to include border broadcasters in the statute.

When it was passed late last year, despite the reasoned amendments proposed by the Senate banking committee, KVOS income was effectively cut in half because any money spent by its Canadian advertisers would no longer be deductible as a business expense. (Most corporations operate at roughly a 50-per-cent tax level. In the old days, if a company spent $1 to advertise on KVOS, 50 cents of it would be paid for by taxes, or rather the lack of them. Now the whole dollar comes out of the client's pocket.)

The only way for Channel 12 to stay competitive was to cut expenses—and rates for commercials—and Canawest was an expensive, expendable showpiece of good corporate citizenship.

The inequities of the legislation, all too apparent to the people who drafted it, still rankle Dave Mintz, president of KVOS (B. C.) Ltd., who gets tired of defending the obvious.

"In the 10 years between 1965 and 1975, in terms of capital expenditures, payroll tax, personnel—expenditures in Canada from KVOS, the film companies and others created by the reinvestment of profits—approximately $75.5 million came back into B.C.," he says.

"That compares to exactly zero for every other station serving Canada from the other side of the line."

The problem Canawest confronted for 15 years was the sort of creative parochialism associated with government and cities like Toronto: If it doesn't happen there, it doesn't happen.

"We brought $500,000 a year here from the U.S. in industrial films, documentaries and commercials, and that's all going back to Hollywood," says Mintz.

"We had work in Alberta and Saskatchewan (through Canawest-Master Films in Calgary) and those jobs will go east. What nobody in a position to do anything seemed to realize was that this was our contribution to Canadian-content production, because we couldn't make it like the other television stations."

Whether the honorable members were looking for a more quixotic affirmation of the "national fabric" or a more esoteric motivation, Bill C–58 became perhaps the first law in Canadian history to be proclaimed without change from its original draft.

Canawest has lost money, a lot of it, trying to provide something the country doesn't seem to want. Animation, despite the deficit financing by KVOS of several projects from Hanna-Barbera, remains an American art form, advertising agencies package most of the major commercials for television nowadays, and producers rent cameras, sets and sound stages rather than accumulate an inventory that would cost $750,000 to replace.

"If we were doing this in Toronto or Montreal, we wouldn't own a stick of equipment," says Mintz. "Out here, you have to, and keep people on staff 52 weeks a year."

It makes for high-priced memories—for actors waiting for an audition call from the Playhouse; grips, gaffers, inkers and electricians, who worked on a 30-second spot for B. C. Hydro or filmed the completion of the highway through the Darien Gap or got scared out of Zaire.

Canawest started simply enough: three guys in a cramped studio trying to put the merchandise in the best light. Before long, they were doing slide shows, film strips, and—with some help—live commercials with live performers, filming testimonials to the Alberta Wheat Pool, the Alberta centennial (featuring Burl Ives) and travelogues for Vincent Price and a show called "If These Walls Could Talk."

Then there was the Canawest initiation into "the weird wonderful world of animation" in 1965 when King Features needed The Beatles series in a hurry to go with the T-shirts, lunch buckets and wrist watches. A small group of artists and assistants did seven episodes. England and Australia got the rest.

By 1967, though, Saturday-morning television was more than the Hollywood animators could handle. Hanna-Barbera had gone to the networks in February with 11 ideas, expecting to sell four or five of them. ABC, CBS and NBC bought nine, and all of them had to be ready for the second week in September.

"They remembered the Beatles series and asked us if we could get that crew back together," says Andy Anderson, president of Canawest, "but by that time, they were scattered all over the world.

"We ended up flying people in from Yugoslavia, England, Czechoslovakia and Spain. Good animators are a rare breed."

Anderson hired students right out of art school, housewives bored with the limitations of creative meals, anyone who could draw, paint or mix the inks. Canawest even started an animation training program with Canada Manpower, and for almost a year, classes of 20 or more painted the muscles of Samson, the waves of Moby Dick and the slapstick gestures of Abbott and Costello.

There were 150 people alone working on the "Wait Till Your Father Gets Home" series. The next year, nothing. The comic-strip panic was over, and by the time the Canawest comptroller figured it all out, the lessons has cost $80,000.

Canadian television, too, was either hit, miss or apathetic, an attitude Mintz had encountered in Ottawa back in 1970 when he suggested KVOS would bankroll the scripts, and even some productions, given some government encouragement. "No thanks," he was informed "we're not interested."

When Global Television was formed, though, Anderson put the hard sell on a series about the country getting to know itself, called "The Canadians."

Look, he told Global, you're back in Toronto and there's this vast enormous thing called Western Canada, particularly B.C., because you've got to get over those mountains, which form at least a psychological barrier . . .

Somebody liked the idea and Stanley Burke, the voice from the past of The National, put together a news magazine that visited a pirate on Vancouver Island, a whistle farm where the owner tests the kind of things you hear from boats and trains, and a couple of longhairs who mass-merchandised the artifacts of the Age of Aquarius and had to adjust to uncomfortable wealth.

Global collapsed into bankrupt reorganization shortly afterwards, and by the time Canawest got through with the receivers, "The Canadians" ended up costing the company $125,000.

"We wanted to use Canadian talent technicians and labs to produce syndicated programs good enough to at least make their money back," says Anderson, "but the government steadfastly refused to be interested.

"Maybe it felt it was being bribed. I don't know, I've given up reading people's minds."

Senator Roth. Gentlemen, the hour is growing late and I regret that I have another appointment. If there is anything in addition, I would ask the two gentlemen to briefly summarize, and of course their statements will be included. But we do have to bring this to an early close.

Mr. **Arries.** I have other remarks, but I will shorten them down, Mr. Chairman.

Senator **Roth.** Can I interrupt just a minute and ask that Mr. Robb, if he would come forward, because we want to give him a chance to comment as well.

STATEMENT OF LESLIE G. ARRIES, JR., PRESIDENT OF BUFFALO BROADCASTING CO., INC., AND GENERAL MANAGER OF STATION WIVB, BUFFALO, N.Y.

Mr. **Arries.** As a border broadcaster, I personally have been involved in a number of attempts, to negotiate a resolution of this issue with various elements in Canada, including broadcasters, cable operators, and Government leaders. We have been at it over a long period of time.

As a member of the board of directors of the National Association of Broadcasters, I have had meetings with the Canadian Association of Broadcasters board of directors, to try to reach a resolve. They called our proposals insulting, and when we asked them for proposals that we might consider they did not have any.

The same thing is true with the leaders of the Canadian Cable Television Association. We talked with them about their policy of commercial deletion. The Canadian newspapers themselves called commercial deletion piracy. They have never been able to offer us any proposal that we can even consider to resolve that issue.

We have talked with many of the leaders of the Canadian Government, including at one time the acting head of the CRTC, Harry Boyle. I personally testified in Canada before the Houses of Parliament, their Senate and their House of Commons, in an effort to resolve this issue.

We have offered all kinds of proposals, including paying Canadian income taxes and creating a production fund to produce Canadian content programing. We have tried to negotiate with any and every idea possible, to no avail.

It is safe to say that the Canadian Government is totally unmoved, totally intransigent. Clearly, we do not carry a big enough stick to get the job done.

Recently I was in Ottawa to meet with our Ambassador Robinson, and I learned from him and his staff that the passage of the mirror bill is an absolute must. Just getting it brought before the Congress is not enough. It has to be passed. And it may not be enough in and of itself. Other measures may have to be found. One such relates to a new teletext technology from Canada called Teledon.

At this point our Government has not given us the support necessary to get the Canadian Government's attention. If we are going to solve this problem we must have the support of the Government behind an expanded mirror bill.

[The prepared statement of Mr. Arries follows:]

STATEMENT OF LESLIE G. ARRIES, JR.
PRESIDENT, BUFFALO BROADCASTING CO., INC.
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
ON S.2051

Friday, May 14, 1982

* * * * *

Mr. Chairman:

Thank you for the opportunity to explain to this committee the need for tough legislation to respond to an unreasonable and discriminatory Canadian trade practice. Nothing less will end the border broadcast war. Nothing less will force the Canadians to budge from their total unwillingness to negotiate or even to consider reasonable compromise proposals.

This is not the first time I've addressed this problem in Washington. Twice I appeared as a witness before the Section 301 Committee investigating the complaint that fifteen U.S. border stations, including my station (WIVB-TV, owned by Buffalo Broadcasting Co., Inc.), filed against Canada. On November 29, 1978 I appeared as a witness for two groups, the National Association of Broadcasters (NAB) and the fifteen Section 301 complaint signatories. The NAB, which opposed Bill C-58 even before it was enacted into law by the Canadian Parliament, had authorized me to express its sense that Bill C-58 was an inequitable, unreasonable and discriminatory measure. I stated in part:

> As a general principle, we believe that the policy behind Section 3 of Bill C-58 is unreasonable because it does not permit U.S. television stations to obtain compensation for the services they provide to Canada. These services include entertainment and information to Canadian viewers, additional commercial availabilities to Canadian advertisers to sell their goods and services, and a programming service to Canadian cable systems. By making it prohibitively expensive for Canadians to advertise on U.S. stations, Canada has severely limited the opportunity of our border stations to compete in an open marketplace and in effect permits piracy of U.S. programming.
>
> * * *
>
> The NAB believes that protectionist barriers will stifle creativity in the long run, and the freedom to see or hear a wide variety of programming is in the best interests of the citizens of both countries. Programs and advertising should be sold without restraints in either country on the basis of open market competitive conditions. An open border for the interchange of television programs and programming service, and for the free flow of advertising revenues according to the needs of both countries' advertisers would do more to strengthen the Canadian and American broadcasting industries than protectionist barriers.

As a witness for the signatories I noted that Bill C-58 was not the first unilateral measure of the Canadian Government intended to limit Canadian advertising on U.S. television stations. Eleven years ago, in 1971, the Canadian Radio and Television Commission (CRTC) issued a document entitled "Canadian Broadcasting--A Single System" which was the genesis of several policies designed to retain U.S. programming for Canadian consumers while discouraging Canadian businesses from advertising on U.S. border stations.

Among the policies recommended was the practice of commercial deletion, deleting the commercials of the U.S. stations on Canadian cable systems and substitution of public service announcements or "other suitable material." The CRTC intially encouraged the implementation of commercial deletion in 1972 on a voluntary basis. Experience showed this to be ineffective. Thereafter, willingness to encourage the practice of commercial deletion was made a condition of license for a number of cable systems. Only after sharp protests from the Canadian Cable Association, from the Canadian press (which used the word "piracy" to express their views as to the unfairness of the practice) and from Canadian citizens writing letters to the newspapers as well as opposition from our government did the Canadian government defer implementation of commercial deletion.

But even as Canada was about to moderate its policy on commercial deletion, it enacted Bill C-58. This unilateral imposition of an unfair trade barrier is particularly offensive because it impedes the free flow of information between two of the most open democracies in the world.

We have no objections to competing with Canadian broadcasters--as long as the terms are the same. We would much prefer an open trans-border market to protectionist barriers. But if Canada wants the benefits of the services our stations provide, it must allow us a reasonable opportunity to obtain compensation.

Border broadcast stations do not recieve any copyright monies from the Canadian government for programs broadcast and used in Canada, nor do we receive any money from Canadian cable systems which use our signals to obtain subscribers.

We appreciate the deep concerns about national identity and cultural sovereignty that underlie Canadian policies which are used to explain activities such as Bill C-58. But such concerns do not justify a policy so plainly unfair and one-sided.

Moreover, the achievement of a cultural identity is not solely an issue of domestic Canadian import. Canada's cultural policy, according to its present Ambassador to the U.S., is also a "fundamental and inseparable aspect of Canadian foreign policy" which "[pays] demonstrable dividends in commercial terms.[1/] So long as the maintenance of a "healthy cultural reputation" is evaluated by Canadian policy-makers in commercial terms,[2/] U.S. policy-makers should not be reluctant to enforce U.S. objectives with commercial and trade remedies.

[1/] Department of External Affairs, Statements and Speeches, No. 79/20; "Cultural Diplomacy: A Question of Self-Interest" (an address by Allan Gotleib, Under-Secretary of State for External Affairs, to the Association of Universities and Colleges of Canada, Winnipeg, November 12, 1979), 9.

[2/] *Id*.

In recognition of the legitimate Canadian concern with the limited effects of U.S. border competition on the Canadian broadcasting system, the U.S. broadcasters proposed a compromise resolution to this dispute. In return for exemption from C-58, each participating broadcast station would contribute to a Canadian production fund a percentage of its annual revenues, after agency fees, from advertising directed primarily towards Canadian audiences and placed by Canadian companies.

Each qualified "undertaking" selling time in Canada would agree in advance to make such payments and would certify its qualifications to advertisers. Payments to the fund would be credited against any Canadian or U.S. tax liability associated with the broadcasting activity for a qualified "undertaking."

A Canadian Board of Directors would control and administer the fund. The Board's constitution and responsibilities would be established in consultation with the Canadian government.

The purpose of the fund would be to strengthen the Canadian broadcasting system--whether by extension of service, stimulation of Canadian program production or otherwise--and to strengthen other Canadian creative and cultural resources relevant to broadcasting.

While we would prefer a totally unencumbered open market for the sale of broadcasting advertising, we suggested the production fund as a realistic compromise. We presented it as a conceptual approach within which we would be willing to negotiate particular aspects.

As chairman of a delegation of U.S. broadcasters representing the National Association of Broadcasters, I suggested the production fund compromise at a meeting in Toronto on April 21, 1980, with a group of Canadian broadcasters from the Canadian Association of Broadcasters. The Canadian flatly rejected the proposal and labeled it "insulting."

I came home from the Toronto meeting convinced that it is impossible to resolve the border broadcast issue solely within the private sector--with Canadian broadcasters or cable system operators--nor does it appear possible to offer jointly suggested solutions to our governments. Unfortunately, this conclusion has been confirmed at a subsequent meeting last fall between the NAB and our Canadian counterparts. Even after the NAB warned that President Reagan intended to reiterate President Carter's finding in the Section 301 case and suggest that tougher action might be necessary, the Canadian broadcasters remained steadfastly intransigent.

Similarly, most members of Canadian delegations to Interparliamentary Group Meetings with our Congress have refused to face the issue on any reasonable terms. We deeply appreciate the repeated efforts of our delegations to engage the Canadians in meaningful dialogue on Bill C-58 and other cross-border communications issues. Just a few weeks ago I received a letter from Rep. Frank Horton, who had attended the most recent Interparliamentary meeting with Canada in March. After noting that the American delegation raised the border broadcast war issue, Rep. Horton stated, "It was the consensus of the American delegation that the Canadians continue to resist a reasonable solution to the problem." Rep. Horton, a co-sponsor of H.R. 5205 (the House companion bill of S.2051), pledged his support to win House passage of "this important legislation."

Mr. Chairman, this is very important legislation. The Congress and the Administration, acting in response to our Section 301 complaint, can succeed on a government to government basis where we failed on an industry to industry basis. Only tough legislation--stronger than the present mirror bill--will finally convince the Canadians that they cannot stonewall our government forever. We have been reasonable; we have been patient; now it is time for our Congress to act.

Our goal never has been to win the border broadcast war. All we ask of Congress, all we ask of Canada, is an equitable bilateral resolution. We need your support to restore free trade in telecommunications services.

Record

BUFFALO BROADCASTING COMPANY, INC.
2077 ELMWOOD AVENUE
BUFFALO, NEW YORK 14207
PHONE: 716/874-4410

WIVB-TV

May 27, 1982

Mr. Robert Lighthizer
Chief Counsel
Committee on Finance
Room 2227
Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Lighthizer:

During the hearing on May 14, 1982, before the Subcommittee on International Trade on S. 2051, David Robb, a U.S. citizen, Mayor of Grosse Point, Michigan, and General Manager of Windsor, Ontario, radio station CKLW, testified that the legislation would have "a devastating impact" on CKLW and the Detroit community. He asserted that S. 2051 would cause the elimination of 23 full-time employees, the loss of expenditures by CKLW to U.S. suppliers of one million dollars and elimination of free public service announcements to U.S. charities equivalent to over $300,000. Characterizing the station as "a good neighbor," Robb testified that CKLW "made several attempts to convince Canadian ministers of the potential harm to CKLW of the Canadian tax policies." These arguments were made in an attempt to convince the Committee to amend S. 2051 so that it would not be applicable to CKLW.

While U.S. border broadcasters believe it is unfortunate that Congress is faced with a need to pass legislation that adversely impacts any broadcast station, nevertheless, we must respectfully express our strong opposition to the suggestion that CKLW should be exempt from S. 2051. If the bill is amended to exclude CKLW, S. 2051 would become a hollow shell without any significant effect on Canadian broadcast interests since CKLW is a major Canadian broadcast station presently selling substantial advertising in the United States. Canada would certainly interpret a

CKLW exclusion as meaning that the Congress is not committed to significant action to finally resolve this lingering bilateral problem.

Based on U.S. broadcaster experience with C-58, CKLW's assertions about alleged harm that would befall the Detroit community as a result of S. 2051 are laughable. Regrettably, U.S. broadcasters have a great deal of first hand experience with the effects of the C-58 bill. We do agree that S. 2051 will have an impact on CKLW. Moreover, the greater Detroit community is not likely to be harmed since Detroit businesses now advertising on CKLW will switch their advertising to numerous other Detroit radio stations. These U.S. stations will, in turn, gain most, if not all, of the advertising dollars and promotional budget lost by CKLW. The U.S. jobs lost at CKLW's Detroit sales office will be added at the other Detroit stations and the profits lost by CKLW's Canadian owners will be gained by the U.S. owners of these other stations. Furthermore, nothing in S. 2051 will force CKLW to eliminate public service announcements for U.S. charities. In fact, CKLW will have to work harder to reach Detroit listeners and is most likely to add more Detroit community-oriented services to remain competitive with U.S. stations in the market.

Finally, we find it both incomprehensible and audacious that CKLW would ask the United States Congress for special treatment. It is disengenuous for CKLW to suggest, as Mr. Robb did during his testimony, that CKLW is an innocent bystander about to be unfairly hurt by S. 2051. Since 1970, CKLW has been owned by the same company, Baton Broadcasting, which is also the licensee of CFTO-TV, a highly popular Toronto, Canada, station. These two stations are probably the most profitable stations in Canada which are the primary beneficiaries of C-58. A recent newspaper article, which is attached, demonstrates this. John W. Bassett, Chairman of Baton Broadcasting, has been a more than ardent supporter of C-58 since its inception for obvious financial reasons. Even before implementation of C-58, I debated Mr. Bassett on an hour-long television program presented in both Toronto and Buffalo, on this very subject. Mr. Bassett spoke strongly in favor of implementation of the Canadian policy.

We find it inconceivable that the Congress would provide special treatment to a radio station owned by a person who is the major beneficiary and an ardent supporter of C-58. The Committee should suggest to Mr. Bassett that he can solve CKLW's problems by persuading the Canadian government to repeal C-58. We doubt Mr. Bassett will do so. Even if S. 2051 is enacted as introduced, Baton Broadcasting is still better off that if the Canadian government repealed C-58 since Mr. Bassett's Toronto TV station will gain more profits through C-58 that CKLW will lose through S. 2051.

We hope this information places the CKLW testimony in proper perspective. We respectfully ask that it be made part of the hearing record.

Sincerely yours,

Leslie G Arries Jr

Leslie G. Arries, Jr.
President

LGA/ad

Baton is criticized by Rogers

The cable television industry's fight with broadcasters for control of highly lucrative pay-television was given a favorable airing at the annual meeting of Canadian Cablesystems Ltd. of Toronto.

Baton Broadcasting Inc. of Toronto, "the Ewing Oil of Canadian communications," was sharply criticized by Edward Rogers, vice-chairman and chief officer of Cablesystems. He called the company one broadcaster that has benefited from regulations designed to increase Canadian content and protect Canadian broadcasters.

The policies that have prevented cable companies from introducing pay-TV and other services "have enriched private television station owners beyond their wildest expectations," he said.

At least half of Baton's more than $60-million pre-tax profit in the past three years came from "revenues directly flowing from the cable television industry service in providing program substitution, and from Bill C-58. Both enhance the monopolies and cash flows of this small band of private television companies," Mr. Rogers said.

When a show runs simultaneously on U.S. and Canadian television, cable companies carrying the U.S. show must substitute the Canadian broadcast, giving Canadian advertisers more exposure and allowing Canadian stations to raise advertising rates.

Bill C-58 removed the tax deduction for advertisers buying time on U.S. border stations, shifting revenues to Canadian stations.

However, broadcasters have not used the extra revenue to promote Canadian programming, as intended, though viewers have lost some freedom of choice because pay-TV has not been allowed to go ahead.

Mr. Rogers said he expected it would be a reality by early 1952 at the latest.

When pay-TV arrives, "we would strongly oppose any pay-TV network application dominated by broadcasters whose primary motive would be to ensure that the pay service always would be inferior to their existing broadcasting services.

"The television broadcasters obvious conflict of interest would result in little competitive programming being put on the pay service."

Mr. Rogers said he would prefer to see competing pay networks, but if there is to be only one, it should include cable companies, broadcasters, program producers and investors.

User pay services are important for cable companies because basic cable rates have not kept pace with inflation. In the past decade, increasing numbers of subscribers protected the companies' rate base, but high penetration levels have ended this source of growth.

"In the Eighties, the rate for basic cable service can only be protected against inflation by the growth in the number of services."

Because the regulations designed to promote Canadian programming do not appear to have worked, Mr. Rogers called for "a public accounting by the privileged few companies who financially benefited from this very sensitive legislation."

Bill C-58 should be reviewed by the Government, and Cablesystems will petition the Canadian Radio-Television and Telecommunications Commission to amend the regulations to make broadcasters show that the cash flow produced by program substitution is enhancing Canadian programming.

Senator ROTH. Mr. Cohen, do you have anything to add?

STATEMENT OF SHELDON COHEN, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE, SPECIAL COUNSEL TO WOMETCO ENTERPRISES, INC.

Mr. COHEN. Thank you for your indulgence. I would only add a couple of remarks, Senator.

I have represented the border broadcasters, insofar as this is a tax matter. I have discussed this with Canadian tax officials, with officials of the Canadian Embassy, with our tax officials negotiating the tax treaty, with the State Department and with people on the Hill.

In every instance, I can confirm what you heard before: That is, that the Canadians refuse even to discuss negotiating the subject. It is therefore, I believe, absolutely essential that the measure before you, which we heartily endorse, be enacted.

This committee and the Congress have strongly supported the 301 process. Here is the first concrete example to make it work. We believe enactment of this legislation, or even stronger legislation, will be an important element in that process.

Thank you, sir.

[The prepared statement of Mr. Cohen follows:]

STATEMENT OF SHELDON S. COHEN, ESQ.
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
OF THE UNITED STATES
ON S.2051

Friday, May 14, 1982

* * * * * * *

Mr. Chairman:

I am Sheldon S. Cohen of the law firm of Cohen and Uretz in Washington, D.C. I am appearing on behalf of Wometco Enterprises, Inc., parent company of KVOS Television, licensee of KVOS-TV, Bellingham, Washington, and on behalf of a number of other border broadcasters.

As you know, I am a tax lawyer and do not deal in international trade work except as to its tax aspects. On several occasions I have testified about the border broadcast dispute before committees of the Senate and the House and before the Section 301 Committee.

The border broadcast Section 301 case concerns the use of the Canadian tax code to impose a "non-tariff" trade barrier. It might be helpful, therefore, to discuss the steps our clients have taken to use the Section 301 process to seek fair access for their services to a foreign market.

Even before our clients filed a Section 301 complaint on August 28, 1978, we worked diligently with this Committee, other members of Congress, and the Executive Branch to reach a negotiated settlement. When it became obvious that the Canadians were entrenched in their "no negotiation" position, we turned to the 301 process. To bring our case through that process, we have filed five major legal documents with the Section 301 Committee, and participated in two full scale public hearings before the Section 301 Committee, and held countless informal meetings with executive branch officials. During this entire process, Canadian representatives participated. Appended to this statement is a chronology of events in our 301 case.

On July 31, 1980, President Carter found that the Canadian tax law constituted an unfair trade practice and burdened and restricted U.S. commerce in violation of Section 301. In a message to Congress on September 9, 1980, the President recommended enactment of mirror legislation. This recommendation occurred two years after we had first filed the complaint. It was too late in the 96th Congress for any action on that legislative recommendation.

With the change in Administrations, the process resumed soon after Ambassador Brock took office. It was necessary for a whole new team of trade officials to review the case and formulate its response. President Reagan recommended action on November 17, 1981. While President Reagan reiterated the need for legislation, his message warned Canada that further action would be taken if necessary to remedy the violation of Section 301.

President Reagan's stronger message reflected the lack of movement by the Canadian government in response to President Carter's proposed mirror legislative recommendation. The current Administration recognizes that the Canadian intransigence on this issue will not change unless we can exert more leverage on this issue. The President has asked Congress to provide that extra leverage. The successful resolution of this 301 case rests in your hands. And I might say this 301 case is one of the first involving the export of services, an area of growing concern to American business people and the Administration.

As we approach the fourth anniversary of the filing of the Section 301 complaint, our stations still face the effect of a nearly 100 percent tariff on the sale of advertising to Canadian businesses. So, where has the Section 301 process taken us?

- It has confirmed that Bill C-58 violates Section 301;
- Two Presidents have proposed mirror legislation;
- Bi-partisan groups of prominent Senators and Representatives have sponsored mirror bills;
- This Committee is holding a hearing.

That is where four years of pursuing a Section 301 complaint has taken us.

You have heard from Mr. Hollands and Mr. Arries about the harm to their stations and the recalcitrance of the Canadians. Clearly, these U.S. broadcasters have shown remarkable patience and perseverance with the 301 process.

Thus far it has been an expensive, lengthy and fruitless effort. But we believe that this Committee, if it so chooses, can work with the President and Ambassador Brock to vindicate our decision to rely on Section 301.

The Canadians, themselves, have recognized Section 301 as a potentially significant trade tool. One of the Canadian parties participating in the border broadcast Section 301 case stated:

> Section 301 is a dramatic, powerful yet measured weapon given to the President with respect to trade practices of foreign governments. It is viewed from outside the United States with great interest, by all America's major trading partners. 1/

Our goal now, as it has always been, is not to win a battle; it is only to restore the various stations' ability to compete in the Canadian markets on an equitable basis.

I want to emphasize that the purpose of S. 2051 is neither to punish the Canadians nor to recompense the injured U.S. broadcasters. An expanded mirror bill's sole purpose is to obtain negotiating leverage to encourage Canada to open its broadcast advertising market to U.S. border stations on an equitable basis. Such legislation would be effective only as long as the offending Canadian law remains in effect.

I understand that several members of this Committee, based on contacts with Canadian officials, believe that the pending

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1/ Statement of Counsel for Rogers Telecommunications Ltd., Response to Supplemental Submission, July 9, 1980 at 11.

bill may need strengthening to be effective. If any members are interested, I am prepared to work with you and your staff on how the mirror concept might be expanded.

We believe that this Committee can use the proposed legislation to aid in remedying our long-standing complaint. After relying for so long, at so high a cost on the 301 process -- established, in large part by this committee -- we hope you will agree with the Administration and our clients that this is an opportunity to make the process work. We believe that the merits of our case -- as stated by President Carter and confirmed by President Reagan -- should make the decision of each member to support effective legislation relatively easy.

APPENDIX TO STATEMENT OF SHELDON S. COHEN

Section 301 Complaint Chronology of Events

- August 29, 1978: Fifteen U.S. border broadcast stations file a formal complaint under Section 301 of the Trade Act of 1974 with the Special Trade Representative alleging trade discrimination by Canada in C-58.

- November 22, 1978: Broadcasters file 77-page brief with 81-pages of appendices.

- November 29, 1978: STR hearings on the complaint. Canadian broadcasters appear in opposition to the complaint.

- January 1, 1979: Broadcasters file 84-page reply brief with 45 pages of appendices.

- 1979: Congress amends Section 301 to clarify its scope. Language was included specifically to answer Canadian arguments that Section 301 Trade Act relief did not extend to broadcast advertising services.

- February, 1980: USTR tells Canadian Government a final resolution to the complaint must be reached before the statutory deadline of July, 1980.

- July 9, 1980: USTR Hearing on possible remedies. Senators Moynihan and Heinz submit testimony on behalf of the broadcasters. Broadcasters file 50-page supplemental submission before the hearing and a 32-page rebuttal brief in response to issues raised at the hearing.

- July 31, 1980: President Carter determined that Canada had acted unreasonably and recommended mirror image legislation.

- September 9, 1980: President Carter sent a message to Congress, calling for the enactment of mirror image legislation. The 96th Congress did not have time to consider the proposal.

- November 17, 1981: President Reagan signed a message to Congress, calling for early passage of mirror image legislation.

- December 14, 1982: Rep. Conable introduces mirror legislation, H.R.5205. Reps. Jones, VanderJagt, Frenzel, Kemp, LaFalce, Nowak, Swift, Marks, Martin, Oberstar, Fascell, Horton, co-sponsor.

- February 2, 1982: Senator Danforth introduces identical bill, S.2051. Sens. Moynihan, Bentsen, Heinz, Wallop, Symms, Mitchell, Gorton, Jackson, Cohen, Pressler, co-sponsor.

Senator **Roth**. Part of the purpose of the other legislation we are considering today is to try to deal with the kind of problem your service industry has faced. We are all genuinely concerned about the problem the broadcasting industry has encountered because of the action taken by the Canadian Government.

I have only one question I would like to ask you, and one of you has already touched upon it. There are indications that the so-called mirror bill as presently written will not accomplish its goal in persuading the Canadians to change their outrageous discrimination against our border broadcast stations. There also appear to be further indications that the mirror legislation concept can be expanded so that it can be made effective.

Would you care to say how it can be expanded?

Mr. **Arries**. Yes. We believe it would be appropriate to deny access to our market for the new Canadian technology called Teledon. The generic name for it is teletext. It is a system that will allow, in the blanking lines of a television picture, information like what a computer could hold. There are a number of reasons why we believe the expansion of such legislation to include Teledon technology is appropriate. First, the Canadian Government, the same people who enacted C-58, have spent a lot of money developing this system. They would be deeply concerned if there were any barriers to marketing that system in the United States.

Second, it is my understanding that they are projecting a billion dollars in revenue from that system in the United States by the end of the decade.

Another reason why this has some attractiveness is that it ties into telecommunications and does not go beyond that area.

Additionally, there are other comparible systems, so that we would not be hurting prospective consumers in this country if we took action as far as Teledon is concerned.

And finally, since the effect is prospective only, there is no established teletex market today, it is not something that would be disruptive as of the present time to take action as far as Teledon is concerned. And I assure you, Mr. Chairman, that it would get the attention of the Canadian Government.

Senator **Roth**. Thank you.

I now would like to call upon Mr. Robb, who is the general counsel for Station CKLW, Windsor, Canada, who is accompanied by Thomas Gallagher. Mr. Robb, as we have done in prior situations, we will include your statement in its entirety and would ask you to summarize. We welcome you here today.

STATEMENT OF DAVID ROBB, GENERAL COUNSEL, STATION CKLW, WINDSOR, CANADA, ACCOMPANIED BY THOMAS J. GALLAGHER, JR., O'CONNOR & HANNAN, WASHINGTON, D.C.

Mr. **Robb**. Thank you very much, Senator.

Mr. Chairman, I want to thank you for this opportunity to speak to you today. I am David Robb, mayor of the city of Grosse Pointe, Mich., and I am appearing here today as general counsel for CKLW, with offices located in Southfield, Mich.

I want to make it clear at the outset that we are not representing the Canadian Government position. We believe that the proposed bill would have a devastating impact on the activities of a good neighbor and a tragic economic impact on U.S. citizens through the loss of jobs, business expenditures, et cetera, in a State already ravaged by the highest unemployment in the Nation.

Our history conclusively shows that CKLW and Detroit have always been inseparable. The station was built 50 years ago by an American broadcaster, George Storer. It has continuously maintained offices, studios, and staff in Michigan. It has been subject to U.S. taxes throughout its history.

We want to point out that we are U.S. taxpayers. We always have been U.S. taxpayers. CKLW has used an unbroken line of U.S. radio talent represented by the Detroit local of the American Federation of Television and Radio Artists.

I wish to correct the information we understand is being circulated about how much of our revenue is derived from Detroit. The figure of 90 percent has been used, but in fact it is only about 50 percent, or less than $2.5 million annually.

This bill will have the effect of eliminating jobs of U.S. citizens whose current income and benefits exceed $1 million annually, eliminating more than $1 million in expenditures to U.S. suppliers of goods and services, eliminating free public service broadcasts to U.S. charities equivalent to over $300,000 annually, plus hundreds of thousands of dollars directly raised for these charities. Recently, our Walk for Mankind raised $600,000.

By a quirk of fate, at a time in history when borders and governments were less complicated, George Storer chose to erect a transmitter on his neighbor's land. But for this decision, CKLW would probably be a Detroit radio station.

If this bill is enacted, the dollars claimed to be lost by U.S. broadcasters, we do believe, will not be returned. On the contrary, passage of this bill would deprive the depressed Detroit community of over $1 million annually in jobs, over $1 million annually in goods and services expenditures, and over $300,000 annually in public service contributions.

Thank you.

[The prepared statement of Mr. Robb follows:]

PREPARED TESTIMONY OF
DAVID ROBB, ESQ.
GENERAL COUNSEL
CKLW RADIO BROADCASTING LIMITED
ACCOMPANIED BY
THOMAS J. GALLAGHER, PARTNER
O'CONNOR & HANNAN
MAY 14, 1982

BEFORE THE SENATE SUBCOMMITTEES ON
INTERNATIONAL TRADE AND TAXATION
AND DEBT MANAGEMENT OF THE
SENATE COMMITTEE ON FINANCE
MAY 14, 1982

Mr. Chairman and Members of the Committee, thank you for this opportunity to speak to you today. I am David Robb, Mayor of the City of Grosse Pointe, Michigan and appearing here today as General Counsel for CKLW Radio Broadcasting Limited, which operates CKLW-AM, CKJY-FM and also owns CKLW Radio Sales Inc., with offices located in the Detroit suburb of Southfield, Michigan. I have been counsel for CKLW for many years.

I want to make it clear at the outset that CKLW does not represent the Canadian Government and does not appear here as an advocate of its policies. We have, in fact, made several attempts to convince our ministers of the potential harm to us of the Canadian tax policies. This severe injury to one single radio station -- the almost certain result of the retaliatory bill proposed here -- is the subject of my statement today.

CKLW believes that this proposed bill would have a devastating impact on the activities of a good neighbor of the Detroit community and a tragic economic impact on U.S. citizens, in a State already ravaged by the highest unemployment in the nation (both Detroit and Michigan had 17.3% unemployment in April 1982). I am talking about loss of jobs, significant loss or total loss of business expenditures to U.S. suppliers of goods and services and elimination of a significant contribution to Detroit's community services and charities.

I would like at this point to review the history of CKLW, which conclusively shows that CKLW and the Detroit market are and always have been inseparable.

- CKLW was built 50 years ago by an American broadcast giant, George B. Storer (Storer Broadcasting), who was also the station's first President.
- CKLW was the Detroit outlet for the then infant CBS network and the Mutual Network.
- In 1933 CKLW, the only international cleared channel on the North American continent, directly served 15 Michigan, 27 Ohio and 5 Ontario counties.
- CKLW has continuously for 50 years maintained offices and/or studios and staff in Michigan. To our knowledge no other Canadian border radio broadcaster maintains a registered office in the United States.
- CKLW has for decades been known as "Your Good Neighbor Station."
- When CKLW went to 50,000 Watts in 1949, the Governor of Michigan, G. Mennen Williams, presided over the inaugural ceremonies.
- CKLW has been subject to and paid U.S. State and local taxes throughout its 50-year history, and is subject to U.S. Federal taxes based on agreements

reached by the Competent Authorities of Canada and the United States.

* Traditionally, CKLW has been programmed for the Detroit and adjacent markets using an unbroken line of U.S. radio talent.
* CKLW is represented by the American Federation of Television and Radio Artists, Detroit local.

Incidentally, I want to correct some erroneous information I understand is being circulated concerning how much of CKLW's revenue is derived from the Detroit community. The figure of 90% has been used but in fact ony about 50% of our revenues, or less than $2.5 million annually, comes from the Detroit community.

This legislation, if enacted, will have the effect of:

-- Elimination of 30% of CKLW's full-time work force (comprising approximately 50% of CKLW's total payroll). A loss of jobs to U.S. citizens, whose current income and benefits are in excess of one million dollars annually. There are 23 full-time employees (or 30%) who are U.S. citizens.

-- Elimination of expenditures to U.S. suppliers of goods and services which total in excess of one million dollars annually. Advertising/promotion spent on Detroit media: $500,000. Operating expenses of Southfield offices: $275,000. Acquisition of U.S. programs: $100,000. Administrative costs: $110,000. Miscellaneous expenditures: $25,000.

-- Elimination of free public service broadcasts to U.S. charities, equivalent to over $300,000 annually in commercial time, plus hundreds of thousands of dollars directly raised for organizations such as Muscular Dystrophy, American Red Cross, March of Dimes, Detroit Board of Education, and many others. One of CKLW's fundraising activities, The Walk for Mankind in 1976, raised $600,000.

By a quirk of fate, at a time in history when borders and governments were less complicated, George B. Storer chose to erect a radio transmitter on his neighbors' land. But for this decision in 1932, CKLW would probably be a Detroit radio station. To keep distances in perspective, downtown Detroit is a mere 5,000 feet from downtown Windsor.

This proposed legislation would all but wipe out the continued service to over a million U.S. listeners. Yet this is by no means the exclusive remedy available to this country in response to Canada's restrictive broadcast tax law.

Section 301 of the Trade Act of 1974 (as amended by the Trade Agreements Act of 1979), 19 U.S.C. § 2411 (1979), grants the President wide latitude to respond to a broad range of harmful foreign trade practices. If he determines that response by the United States is appropriate, the President may act

> (1) to enforce the rights of the United States under any trade agreement; or
>
> (2) *to respond to any act, policy, or practice of a foreign country or instrumentality that* --
>
> > (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under any trade agreement, or
> >
> > (B) *is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce*.

Such response may include "*all appropriate and feasible action*" within the President's power, and may be made on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved. Section 301(a), 19 U.S.C. § 2411(a).

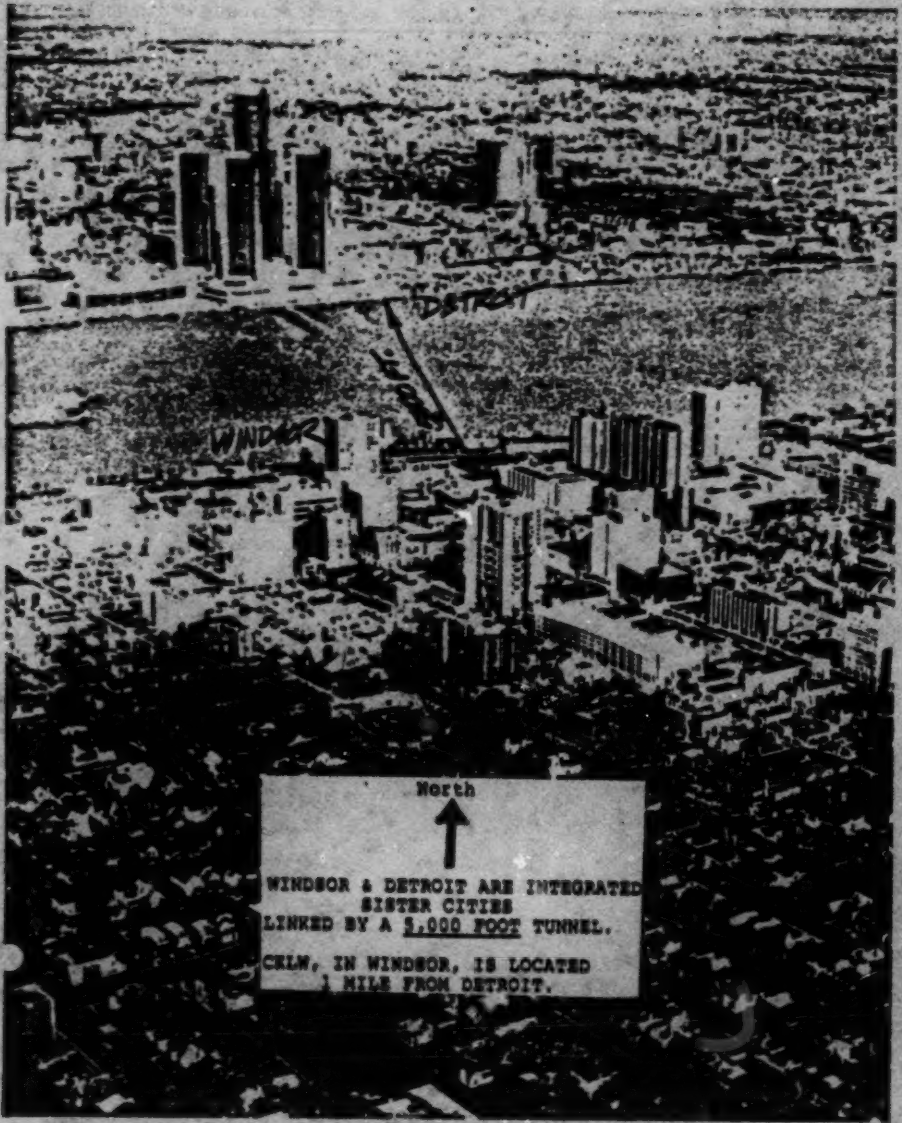
Section 301 provides further that the President may, in addition, withhold trade agreement concessions from the foreign country or instrumentality responsible for the injurious practice or may impose special import fees or restrictions on the products and services of that foreign country or instrumentality for whatever period of time he considers "appropriate." Section 301(b), 19 U.S.C. § 2411(b).

Thus, we submit, the wisdom of the proposed legislation should be very, very carefully considered before this route is chosen over the great variety of other avenues available in response to the Canadian practice.

If this bill is enacted, the $20 million claimed to be lost by the U.S. broadcasters will not be returned to the U.S. To the contrary, in its impact on CKLW, the passage of this bill would depive the depressed Detroit community of:

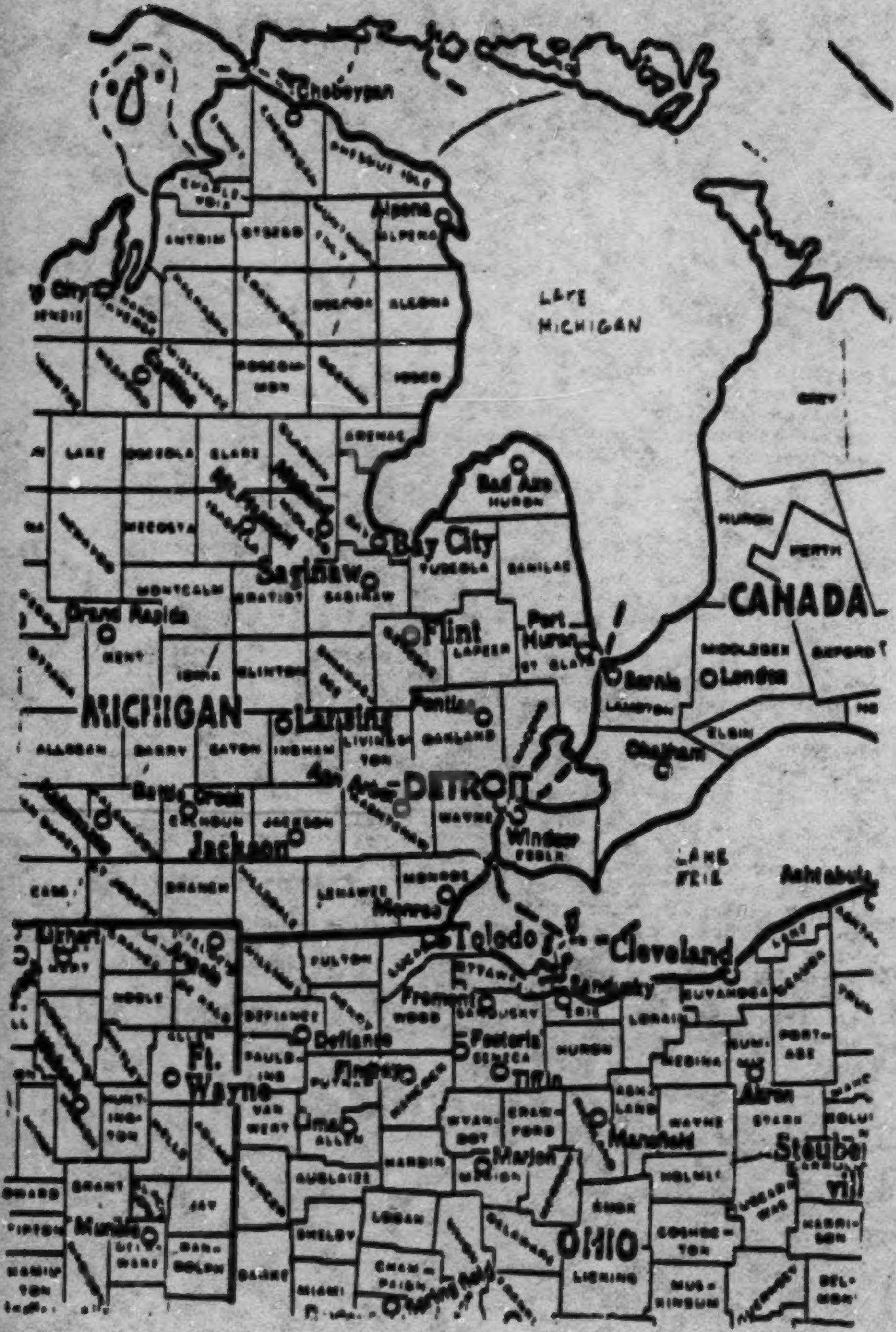
* over $1 million annually in jobs;
* over $1 million annually in goods and services expenditures; and
* Over $300,000 annually in public service contributions.

Thank you.



WINDSOR & DETROIT ARE INTEGRATED
SISTER CITIES
LINKED BY A 5,000 FOOT TUNNEL.

CKLW, IN WINDSOR, IS LOCATED
1 MILE FROM DETROIT.


Cheboygan
Alpena
ANTRIM
OTSEGO
ALPENA
ALCONA
ROSCOM-MON
IOSCO
LAKE MICHIGAN
ARENAC
LAKE
OSCEOLA
CLARE
MECOSTA
Bad Axe
HURON
Bay City
Saginaw
TUSCOLA
SANILAC
MONTCALM
GRATIOT
SAGINAW
Grand Rapids
KENT
IONIA
CLINTON
Flint
LAPEER
Port Huron
ST CLAIR
MICHIGAN
Lansing
Pontiac
ALLEGAN
BARRY
EATON
INGHAM
LIVINGS-TON
OAKLAND
DETROIT
Ann Arbor
Battle Creek
CALHOUN
JACKSON
Jackson
WAYNE
Windsor
ESSEX
CASS
BRANCH
LENAWEE
MONROE
Monroe
Toledo
Cleveland
Ashtabula
FULTON
LUCAS
OTTAWA
Sandusky
Fremont
WOOD
SANDUSKY
ERIE
LORAIN
CUYAHOGA
NOBLE
DEFIANCE
Defiance
Fostoria
SENECA
Tiffin
HURON
MEDINA
SUMMIT
PORT-AGE
Ft. Wayne
PAUL-DING
PUTNAM
Findlay
ASH-LAND
WAYNE
Akron
STARK
HUNT-ING-TON
VAN WERT
Lima
ALLEN
WYAN-DOT
CRAW-FORD
Mansfield
Steuben-ville
GRANT
JAY
AUGLAIZE
HARDIN
Marion
MARION
HOLMES
TUSCARA-WAS
TIPTON
Muncie
DELA-WARE
RAN-DOLPH
LOGAN
SHELBY
KNOX
OHIO
COSHOC-TON
HARRI-SON
HAMIL-TON
DARKE
MIAMI
CHAM-PAIGN
LICKING
MUS-KINGUM
BEL-MONT
HURON
PERTH
CANADA
MIDDLESEX
OXFORD
Sarnia
London
LAMBTON
ELGIN
Chatham
LAKE ERIE

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KEVIN M. STERLING
PAUL C. LOUISELL
RICHARD A. NEATON

REUBEN M. WATERMAN, JR.
OF COUNSEL

June 28, 1982

Mr. Robert Lighthizer
Chief Counsel
Committee on Finance
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Lighthizer:

In a letter to you of May 27, 1982, Mr. Leslie Arries, a Buffalo, New York broadcaster, made certain allegations concerning my May 14 testimony on S.2051 before the Subcommittees on International Trade and Taxation and Debt Management which I feel should be answered.

First, I wish to clarify my position with respect to CKLW. As my testimony stated, I have been Mayor of the City of Grosse Pointe, a Detroit suburb, for many years and also act as General Counsel of CKLW -- not "General Manager", as Mr. Arries states. Through many years of service in that capacity, I am very familiar with CKLW's continuing commitment to the Detroit community.

As Mr. Arries has said, I testified that CKLW had made many attempts to convince the Canadian government of the potential harm to CKLW of C-58. In support of that testimony I am attaching as Exhibit A, CKLW's correspondence and telegrams with Canadian Ministers and government officials. In addition, Chuck Camroux, CKLW's President, has had personal discussions with Canadian Minister of External Affairs Mark MacGuigan and other Canadian policymakers, such as retired Senator Paul Martin. These repeated attempts have met with no sympathy, and the results strongly suggest that Canada's position is unlikely to be changed by the enactment of U.S. mirror legislation.

Responsive specifically to Mr. Arries' comments are the following answers by CKLW:

1. Mr. Aries states:

> "Moreover, the greater Detroit community is not likely to be harmed since Detroit businesses now advertising on CKLW will switch their advertising to numerous other Detroit radio stations. These U.S. stations will, in turn, gain most if not all of the advertising dollars and promotional budget lost by CKLW. The U.S. jobs lost at CKLW's Detroit sales office will be added at the other Detroit stations and the profits lost by CKLW's Canadian owners will be gained by the U.S. owners of these other stations."

CKLW's Answer:

These unsupported speculations by Mr. Arries -- who, as a Buffalo, New York broadcaster, cannot be considered an expert on the economics of the Detroit radio market, are answered by letters dated June 2, 1982 from the AFTRA Detroit local to Senators Riegle and Levin (copies of which are attached as Exhibit B).

> "There is no question that many if not all of [CKLW's] U.S. employees will lose their jobs if the proposed legislation is enacted, because U.S. advertisers - who provide approximately half the station's advertising revenues - will withdraw their advertising because of the doubling in costs."
>
> "There is very little chance that these people will be able to find jobs with other broadcasters in the area, whose ability to expand and employ new personnel will be entirely unaffected by the loss of advertising revenues to CKLW. The local radio market is such that

> CKLW enables advertisers to reach a market segment not reached by other stations. Thus advertisers will not simply transfer their bookings from CKLW to other stations, but simply withdraw them entirely."

I respectfully submit that the Detroit local of the American Federation of Television and Radio Artists, AFL-CIO, which has long represented most radio and television employees in the Detroit market, including those of CKLW, is in a better position to judge the effects of the proposed mirror legislation on the economy and jobs in the Detroit community.

3. Mr. Arries states:

> "Finally, we find it both incomprehensible and audacious that CKLW would ask the U.S. Congress for special treatment. It is disingenuous for CKLW to suggest, as Mr. Robb did during his testimony, that CKLW is an innocent bystander about to be unfairly hurt by S. 2051. Since 1970, CKLW has been owned by the same company, Baton Broadcasting which is also the licensee of CFTO-TV, a highly popular Toronto, Canada, station. These two stations are the most profitable stations in Canada which are the primary beneficiaries of C-58." (emphasis added).

CKLW's Answer:

> CKLW has placed on the record on many occasions that it is not in a profitable position and has not been profitable for the past two years. As evidenced by the AFTRA letters voicing the union's concern, CKLW has continued to carry its U.S. employees, sales offices and full staff even though its losses have been substantial.
>
> The suggestion that CFTO-TV is the major beneficiary of C-58 is incorrect. As Mr. Bassett's letter to me of June 18, 1982 (a copy of which is attached as Exhibit C) states:

> "My television station in Toronto has been the No. 1 rated station for years and years in every single rating and the Buffalo stations have never been the slightest threat to us in advertising solicitations."

The following facts document Mr. Bassett's assertion that CFTO-TV has not benefited significantly from C-58.

- CFTO-TV has been the No. 1 rated station in Toronto since 1968.

- CFTO-TV has never had unsold Prime Time since 1970.

- CFTO-TV's Prime Time rates have not abnormally increased and have remained constant through and after the period of time that C-58 was passed, as evidenced by the Prime Time rate schedule which is attached as Exhibit D.

Since CFTO's Prime Time rates have remained constant, its prime time period has been sold out and it has been the No. 1 station in Toronto since 1968, eight years before the enactment of C-58, the suggestion that CFTO-TV has been the major beneficiary of C-58 is groundless.

3. Mr. Arries states:

> "John W. Bassett, Chairman of Baton Broadcasting has been a more than ardent supporter of C-58 since its inception for obvious financial reasons."

And he continues:

> "Even if S-2051 is enacted as introduced, Baton Broadcasting is still better off than if the Canadian government repealed C-58 since Mr. Bassett's Toronto TV station will gain more profits through C-58 than CKLW will lose through S. 2051."

CKLW's Answer:

> First, Mr. Arries' unsupported speculation as to the profits which might inure to CFTO from C-58 are refuted by the facts stated above.
>
> Second, Mr. Arries' allegations of Mr. Bassett's support for that bill are refuted by Mr. Bassett's letter:
>
> > "For nineteen years I was the publisher of the 'Toronto Telegram' and during that time I strongly fought editorially both original legislation which resulted in the closing of 'Time' magazine's Canadian edition and later when this policy was extended to broadcast media through Bill C-58."
>
> As noted above, Mr. Bassett's early efforts to oppose the enactment of C-58 have been followed more recently by CKLW's attempts to convince the Canadian government to alter or modify this policy.

We believe the foregoing information places my testimony for CKLW in proper perspective and corrects any misinformation conveyed by Mr. Arries'letter. We respectfully ask that, in the interest of fairness and accuracy, it be made a part of the hearing record.

Sincerely,

David Robb

David Robb

DR/SMW

EXHIBIT A

File mirror

Department of External Affairs
Canada
Ministère des Affaires extérieures

OTTAWA, CANADA
K1A 0G2

April 16, 1982

Dear Mr. Camroux,

Dr. MacGuigan has asked me to thank you for your letter of March 24 concerning possible U.S. "Mirror Legislation" of Canadian Bill C-58.

The article you provided is of interest and has been brought to the attention of appropriate officials.

Yours sincerely,

Anne Park

Anne Park
Acting Director
U.S. General Relations

Mr. Chuck Camroux,
President, 800/CKLW
1640 Ouellette Avenue
P.O. Box 480
Windsor, Ontario
N9A 6M6

EXHIBIT A

CKLW AM•FM

April 15, 1982

The Hon. Herb Gray, P.C., M.P.
Minister of Industry,
Trade and Commerce
House of Commons
Ottawa, Ontario

Dear Herb:

Thank you for your letter of April 13, 1982 with comments from Allan MacEachen.

I await your next correspondence.

Sincerely,

Chuck Camroux
President

CC:ed

Minister of Industry, Trade and Commerce
and Regional Economic Expansion

Ministre de l'Industrie et du Commerce
et de l'Expansion économique régionale

EXHIBIT A

April 13, 1982

Mr. Chuck Camroux
President
800/CKLW
1640 Ouellette Avenue
P.O. Box 480
Windsor, Ontario
N9A 6M6

Dear Mr. Camroux:

Further to my letter to you of February 1, 1982 regarding Bill C-58, the Hon. Allan MacEachen, Minister of Finance, has now informed me as follows:

> "...concerning United States proposed mirror legislation in retaliation for Section 19.1 of the Canadian Income Tax Act.
>
> Section 19.1 denies the deduction for tax purposes of the costs incurred in advertising on foreign radio and television stations that is directed to the Canadian market. It is difficult to justify in tax policy terms the disallowance of what is a normal business expense. The raison d'être for this provision is founded strictly on considerations of Canadian cultural policy.
>
> It is my understanding that Section 19.1 has generally been effective in achieving its objectives. However the assessment of the continuing need for this measure is a matter within the responsibility of the Department of Communications and the Secretary of State. I think that only they would be in a position to assess if there might be some action that might be taken - - either by way of a modification of Section 19.1 of the Income Tax Act or otherwise - - that could alleviate the concerns with the effects of the U.S. legislation expressed by Mr. Camroux in his letter to Senator Croll."

I am proceeding to be in touch with the Secretary of State and the Minister of Communications about your letter to Senator Croll and I shall be writing to you again when I receive further information from them.

Canada

.../2

EXHIBIT A

Trusting that the above information will be of interest to you, I remain,

Yours sincerely,

Herb Gray

THE HON. HERB GRAY, P.C., M.P.

1640 Ouellette Avenue, P.O. Box 480, Windsor, Ontario N9A 5M5 (519) 258-8888, (313) 963-1567

800/CKLW

March 24, 1982

EXHIBIT A

To: Hon. Mark R. MacGuigan, M.P.
Hon. Herbert E. Gray, P.C.
Hon. Eugene F. Whelan, M.P.
Dr. John Meisel, Chairman, CRTC

Gentlemen:

In our continued concern over possible U.S. "Mirror Legislation" of Canadian Bill C-58, the attached article is of interest.

It points clearly to the fact that even protectionist tax laws will not stop the business community from advertising where their dollars will do most good. In otherwords, where the listeners really listen.

If Canadian radio broadcasters were allowed to compete for the listeners, without music and other guidelines that bear no relationship to the real world (the listeners), radio stations in Canada would attract those listeners that are now going to U.S. stations.

Because of competition, there would be a full service simply because there would be no room for several stations doing the same thing.

C-58 and Canadian music quotas are similar in that the broadcasters, those affected, have no control over the real problem .... the music producers and the advertisers. Nor should they have control.

Sincerely,

C. Camroux

Chuck Camroux
President

EXHIBIT A

CARL LEVIN
MICHIGAN

United States Senate
WASHINGTON, D.C. 20510

November 30, 1981

Honorable David Croll
The Senate
Ottawa Ont. K1A 0A4, CANADA

Dear Dave:

I am writing you on an issue that will have serious consequences for the cities of Windsor and Detroit. On August 11, 1980, I received a letter from CKLW concerning the possible US enactment of "mirror-image" legislation of existing Canadian law.

In 1976, Canada enacted Bill C-58, which denies an advertising expense deduction to any Canadian advertiser advertising in a US media (specifically, radio and televison) directed at a Canadian audience. As a result, Canadian advertising on US stations was significantly reduced, particularly in the northeast, where US-Canadian competition is the most fierce. The bill is now Section 19.1 of the Canadian Tax Code.

In January 1976, seventeen Senators sent a telegram to former Secretary of State Kissinger, urging him to negotiate a modification of the C-58 policy, known as "commercial deletion." Kissinger met twice with Canadian officials which resulted in a Canadian Cabinet declaration in January 1977 of a moratorium on expanding commercial deletion. While negotiations prevented additional legislation, C-58 remained in effect, resulting in $20 million in lost revenues for US broadcasters.

During the Carter administration, there were various attempts to draft mirror-image legislation. Presently, the White House is considering similar legislation for submission to the Congress in the near future. It has been estimated that this bill will return $5 million to the US from Canada.

However, such a bill will severely affect CKLW, while having a lesser impact on the northeast radio and television stations. This will occur because CKLW obtains most of its advertising from US companies in the Detroit-Windsor metropolitan area. CXLW may be unique, since it plays a significant role in the Detroit area through community service, payment of US taxes, and expenditures in the US of over $1 million annually.

While I am considering an amendment which would provide an exemption for any foreign broadcaster which plays a significant role in a domestic community, such a case is difficult to defend in light of the apparent Canadian position, which seems intractable. My colleagues will see $20 million in lost revenues by US broadcasters, and will therefore be very reluctant to support legislation aiding Canadian broadcasters.

EXHIBIT A

Because of your familiarity with the mood in Ottawa, and the Windsor-Detroit relationship, I am writing to determine if you think there is a possibility of any type of reciprocal exemption for US radio/televison stations. This would facilitate my arguments for this amendment. If such a possibility is out of the question, do you see any alternatives?

Any comments that you might have on this issue would be most appreciated. Love to all.

Sincerely,

Carl Levin

CL/tdc

EXHIBIT A

The Secretary of State for External Affairs   Secrétaire d'État aux Affaires extérieures
Canada

Ottawa, K1A 0G2

September 11, 1981

Dear ~~Mr.~~ Camroux,

I refer to your telex of August 17, concerning proposed U.S. Broadcast Mirror Legislation.

As you are aware, on September 9, 1980, President Carter submitted a proposal to Congress for legislation whose effects would mirror those of Section 19.1 of the Canadian Income Tax Act. Congress did not act on this proposal in 1980 and a similar proposal has not been submitted to Congress this year.

I have been advised that the Reagan administration and in particular, the Office of the U.S. Trade Representative is considering reintroducing such "mirror legislation" but has not yet reached a decision. I am aware of the impact of this legislation and my officials in Washington are monitoring the situation closely.

I understand that you have also written to the Minister of Industry, Trade and Commerce the Honourable Herb Gray concerning this issue and I have taken the liberty of copying this letter to him.

Yours sincerely,

Mark MacGuigan

Mr. Chuck Camroux
President
CKLW Broadcasting Ltd.
Windsor, Ontario

Minister of Industry,
Trade and Commerce

Ministre de l'Industrie
et du Commerce

EXHIBIT A

SEP - 9 1981

Mr. Chuck Camroux
President
CKLW Radio Broadcasting Ltd.
1640 Ouellette Avenue
Windsor, Ontario

Dear Mr. Camroux:

Re: Proposed U.S. Mirror Legislation of Canada's Bill C-58

I am writing in response to your telex of August 14, 1981.

Our understanding is that the United States Trade Representative has sent a proposal, which would enact mirror legislation of Bill C-58, to the White House. The President is expected to consider the proposal upon returning from his vacation in September. If the President approves the proposed legislation, it will be submitted to Congress for its consideration and action. As you will recall, the previous Administration's legislative proposal, which was essentially the same as the current proposal, was submitted to Congress but never passed.

I would like to assure you that the government is aware of the problems that the proposed mirror legislation would create for your radio station, and that we will continue to follow these developments closely.

As I understand you have also been in contact with the Secretary of State for External Affairs concerning the matter, I am taking the liberty of copying this letter to him.

Yours sincerely,

Herb Gray

The HON. HERB GRAY, P.C., M.P.

EXHIBIT A

7 99

TELTEX WND9

DS 714 MTL

#1

This message received direct
from sender by CN-CP Telex

GDN GTI280 182058 GMT

1981 AUG 19 02 15

Reçu directement de l'expéditeur par Télex

MR CHUCK CAMROUX
PRESIDENT
CKLW RADIO BROADCASTING LTD
1640 OUELLETTE AVE
WINDSOR, ONT

ZMH291 IICCOTT
TX
ST
209/18

MIA2092 AUGUST 17, 1981.SUBJECT---BROADCAST MIRROR LEGISLATION REQUEST.

ON BEHALF OF THE HONOURABLE HERB GRAY, I WISH TO ACKNOWLEDGE WITH THANKS YOUR TELEGRAM DATED AUGUST 14, 1981 CONCERNING THE MATTER UNDER REFERENCE.

BE ASSURED THAT YOUR CORRESPONDENCE WILL BE BROUGHT PROMPTLY TO THE ATTENTION OF THE MINISTER.

GEORGE BOTHWELL,DEPARTMENTAL ASSISTANT TO THE HONOURABLE HERB GRAY,MINISTER OF INDUSTRY TRADE AND COMMERCE,235 QUEEN ST, OTTAWA,ONT

EXHIBIT A

UBJ412 AUG 17 0929 EST
OAOA177 34 FR
TLX00 OTTAWA ONT 17 1015
CHUCK CAMROUX PRESIDENT CKLW RADIO BROADCASTING LTD.
~~[illegible]~~/14 WINDSOR ONT
BT 1640 OUELLETTE AVE N8X 1L1

[illegible] 17 10 31

THIS IS TO ACKNOWLEDGE RECEIPT OF YOUR FURTHER TELEX REGARDING THE U.S. BROADCAST MIRROR LEGISLATION REQUEST. PLEASE BE ASSURED OF MY CONCERNED ACTION ON YOUR BEHALF.

HON. EUGENE F WHELAN MINISTER OF AGRICULTURE TLX 053-3283

25 1 [illegible]
[illegible]

EXHIBIT B

Detroit Local AMERICAN FEDERATION OF
TELEVISION and RADIO ARTISTS
A BRANCH OF THE ASSOCIATED ACTORS & ARTISTES OF AMERICA AFL-CIO

HERITAGE PLAZA BUILDING, SUITE 408 • 24801 NORTHWESTERN HIGHWAY • SOUTHFIELD, MICHIGAN 48075 • PHONE 354-1774
MARY ANN FORMAN, EXECUTIVE SECRETARY

June 2, 1982

The Honorable Carl M. Levin
140 Russell Senate Office Bldg.
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

We understand Congress is considering legislation, S. 2051 and H.R. 5205, which would deny to U.S. companies tax deductions for advertising placed with Canadian stations when that advertising is aimed at a U.S. audience.

While apparently meant to put pressure on Canada to withdraw a corresponding tax provision, these bills would seriously hurt a Detroit area radio station which employs many of our members who are U.S. citizens. We refer to Station CKLW, with broadcast facilities in Windsor, Ontario, just one mile from Detroit. These two communities have always been integrally linked sister cities, and for all intents and purposes, CKLW is a Detroit station.

Since June 18, 1951, our Union has represented all of CKLW's "on-the-air" employees (including U.S. citizens) who, together with other U.S. employees, account for over 30% of the station's full-time workforce and over 50% of its payroll. There is no question that many if not all of the U.S. employees will lose their jobs if the proposed legislation is enacted, because U.S. advertisers -- who provide approximately half the station's advertising revenues -- will withdraw their advertising because of the doubling in cost.

AFTRA—DETROIT LOCAL

EXHIBIT B

The Hon. Carl M. Levin Page 2 June 2, 1982

There is very little chance that these people will be able to find jobs with other broadcasters in the area, whose ability to expand and employ new personnel will be entirely unaffected by the loss of advertising revenues to CKLW. The local radio market is such that CKLW enables advertisers to reach a market segment not reached by other stations. Thus, advertisers will not simply transfer their bookings from CKLW to other stations, but simply withdraw them entirely.

As we are sure you are aware, the Detroit community is one of the most economically distressed in the nation. It can hardly be in the interest of the United States to add to the unemployment rolls in Detroit, especially when passage of the legislation -- as even its supporters admit -- will in all probability not change Canada's tax practice.

We respectfully urge, therefore, that this legislation be amended in some way which would exempt Station CKLW and thus avoid further economic injury and loss of jobs to the members of our Local.

Sincerely,

Rubin Weiss

RUBIN WEISS
President-Detroit Local

Mary Ann Formaz

MARY ANN FORMAZ
Executive Secretary

EXHIBIT C

CFTO-TV

	PRIME TIME RATES (30 second spot)	
Jan 1/74	$525	
" 1/75	600	
" /76	600	
" /77	600	
Sept/77	650	
Sept/78	745	[illegible]

Sellout or volume throughout.

EXHIBIT D

BATON
BROADCASTING
INCORPORATED

181 RICHMOND STREET WEST, SUITE 1206
TORONTO, ONTARIO M5H 1T1. 364-6491

OFFICE OF THE CHAIRMAN

18th June, 1982

Mr. David Robb
Rickel, Urso, Wokas, Earle & Robb
100 Renaissance Center, Suite 1575
Detroit, Michigan 48075
U.S.A.

Dear Mr. Robb,

I have read with interest Mr. Leslie Arries' letter to Robert Lighthizer and, with great respect of course, Mr. Arries is entirely wrong.

For nineteen years I was publisher of "The Toronto Telegram" and during that time I strongly fought editorially both original legislations which resulted in the closing of "Time" magazine's Canadian edition and later when this policy was extended to broadcast media through Bill C58.

When Mr. Arries talks about any "financial benefit" to my company from Bill C58, he is of course entirely wrong.

My television station in Toronto has been the No. 1 rated station for years and years in every single rating and the Buffalo stations have never been the slightest threat to us in advertising solicitation.

There was an advantage through Bill C58 to two small struggling organizations in Toronto, namely City TV and Global Network, but none to us.

It is ironic that the Windsor radio station which we still own is the only broadcast outlet in Canada, either in radio or television, which will be affected by the mirror legislation now proposed in the United States.

It is amazing to me, in a sort of sad way, that perhaps the strongest pro-American in all the media for thirty years in this country and the strongest advocate of the free exchange of ideas and business between the United States and Canada, would be the only one to suffer any ill-effect from this legislation.

continued/2 ......

EXHIBIT D

BATON
BROADCASTING
INCORPORATED

- 2 -

It is incredible in 1982, with all the problems facing the Western world, to see the United States Congress wrestling with this matter which will not have the slightest effect in changing Canadian government policy and will achieve nothing at all for anybody. CKLW in Windsor will cope with the situation as it arises, but as I have already pointed out, it will cost several American jobs.

Mr. Arries is obviously bitter that with the development of Canadian television in the Toronto market coming into the field much later than the Buffalo stations, he has seen his business deteriorate in the normal way.

The "mirror legislation" is the concern of the United States Congress and, as I have said, we will cope with the results whatever happens, but I could not let Mr. Arries' statements stand unchallenged, as they are totally incorrect.

Yours sincerely,

John Bassett

JB/mgw

cc: Messrs. D. G. Bassett
G. V. Ashworth
J. J. Garwood
T. R. Jolly, O'Connor & Hannan

Senator ROTH. Mr. Robb, as I understand the situation—and this is not my legislation, but as I understand it, the situation with CKLW is unique. The bill's impact on your station is somewhat different from elsewhere, so that it is possible that legislation might be drafted so that it does not adversely impact on those stations involving American employment. Is that your position?

Mr. ROBB. Our position is exactly that, Senator. If there were a way to accommodate both the interests of the bill that has been introduced and Ambassador Brock's statement today, and at the same time to accommodate the economic interests of the Detroit area and the U.S. employees, it would probably be the best of both worlds.

Senator ROTH. Well, just let me say, I do not think anyone wants to have a negative impact on American employment, particularly in the case of Michigan and Detroit, which are suffering enough already. So I will instruct the staff to be sure to bring this to the attention of the sponsors of the bill, to see whether it is realistic to work out some kind of a solution along the lines you have suggested.

I appreciate all of you gentlemen being here today, and I sympathize with you as well. The whole purpose of these hearings and this legislation is to seek measures that will prevent the kind of a situation we are facing with Canada from arising in the future. I think the story of Detroit shows how protectionism really does not work in anyone's interests.

Mr. COHEN. Senator, we might call on the owners of that station to make entreaties to their Government—they happen to be Canadian owners—to lean on their Government to relieve the grievance which has fallen on our clients.

Mr. ROBB. I might add, Senator Roth, we have made several attempts to convince the ministers of the potential harm to the station, and we shall continue to do that.

Senator ROTH. Thank you very much, gentlemen.

The subcommittee is in recess.

[Whereupon, at 12:31 p.m., the subcommittee was recessed.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

The Business Roundtable

Clifton C. Garvin Jr.
Chairman

Theodore F. Brophy
Cochairman

James H. Evans
Cochairman

Walter B. Wriston
Cochairman

NEW YORK
200 Park Avenue
New York, New York 10166
(212) 682-6370

G. WALLACE BATES
President

JAMES KEOGH
Executive Director—Public Information

RICHARD F. KIBBEN
Executive Director—Construction

WASHINGTON
1828 L Street, N.W.
Washington, D.C. 20036
(202) 872-1260

JOHN POST
Executive Director

Business Roundtable Task Force on International Trade and Investment: Legislative Proposals

May 4, 1982

POLICY COMMITTEE:
• Clifton C. Garvin, Jr., *Chairman* • Theodore F. Brophy, *Cochairmen* • James H. Evans, *Cochairman* • Walter B. Wriston, *Cochairman*
• Robert H. B. Baldwin • Robert A. Beck • W. Michael Blumenthal • John F. Bookout • Charles L. Brown • James E. Burke • Philip Caldwell
• Robert F. Dee • John H. Filer • Richard L. Gelb • W. H. Krome George • Philip M. Hawley • Edward L. Hennessy, Jr. • Edward G. Jefferson
• Donald M. Kendall • Robert D. Kilpatrick • Robert H. Malott • Archie R. McCardell • Ruben F. Mettler • Lee L. Morgan • John R. Opel
• Paul F. Oreffice • Edmund T. Pratt, Jr. • Lewis T. Preston • John M. Richman • James D. Robinson, III • David M. Roderick
• Donald V. Seibert • Richard R. Shinn • George P. Shultz • Andrew C. Sigler • Roger B. Smith • Sherwood H. Smith • Edson W. Spencer
• J. Paul Sticht • Rawleigh Warner, Jr. • John F. Welch, Jr. • Richard D. Wood • Honorary Members: Roger M. Blough • John D. Harper
• Reginald H. Jones • Thomas A. Murphy • David Packard • Irving S. Shapiro

I. PROPOSED AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974.

A. Issue - Should a new cause of action be created which would be based on denial of "substantially equivalent commercial opportunities" or "reciprocal market access"?

BR Position - There is no need to create such a cause of action. It may, however, be appropriate to indicate either in the findings and purposes of legislation or in any accompanying committee reports that these concepts are among the factors to be considered in assessing whether foreign countries are fulfilling their trade commitments. By contrast, the concept of "denial of market access" may, in some form, be an appropriate basis for a Section 301 cause of action. Such a provision would emphasize the growing concern in the United States over foreign restrictions on trade and investment.

Rationale - "Substantially equivalent market access" or "reciprocal market access" should not, for several reasons, become a separate cause of action in the context of an enforcement statute.

First, and most significant, a cause of action based on these concepts would restrict rather than expand the scope of Section 301. As presently drafted, Section 301 requires only an allegation that a foreign action "(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce." If a reciprocity element is added, the United States would also be required to demonstrate that it offers reciprocal market access. This may not always be the case. Thus, if the United States tries to break into a particular market sector in which it has imposed import or investment restrictions, the concept could be used as an affirmative defense by a foreign government.

Second, a new cause of action based on "substantially equivalent commercial opportunities" would be superfluous. The problem of market access is already covered adequately in Section 301. In those areas covered by multilateral or bilateral agreements, the President has authority under Section 301(a)(1) "to enforce the rights of the United States under any trade agreement," and under Section 301(a)(2)(A) to respond to any action which is "inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement." In those areas not covered by multilateral or bilateral agreements, denial of competitive opportunities is actionable under Section 301(a)(2)(B) if it is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce" 19 U.S.C. § 2411.

Finally, reciprocity is essentially a negotiating concept, used as a means of assessing the benefits of multilateral or bilateral agreements. See, e.g., Sections 104 and 126 of the Trade Act of 1974 (19 U.S.C. § 2114(a) and § 2136(c)). Reciprocity is a dangerous concept on which to base a cause of action. It could lead to unilateral denial of access to our market - which may, in turn, trigger retaliatory action.

B. Issue - Should the President be given additional remedial authority under Section 301, and if so, under what circumstance should it be exercised?

BR Position - The primary remedy under Section 301 should be either bilateral or multilateral negotiations.

- As explained more fully below in Sections III.B. and IV.A., Section 301 should be expanded to give the President explicit authority with respect to both service sector trade and investment.

- In the event negotiations fail in those areas covered by GATT or other international trade agreements, remedies should take into account the obligations of the United States under the applicable international agreement.

- In the event negotiations fail in areas not covered by the GATT or other international agreements, the President should have authority to impose fees or restrictions on foreign investment. The President already has authority under Section 301(b)(2) to impose duties or other import restrictions on products and to impose fees or restrictions on services.

- The President should have the authority (1) to take action on a nondiscriminatory basis or solely against the products, services or investment of the foreign country involved and

(2) to take action affecting products, services or investments other than those (or their equivalents) involved in the Section 301 investigation, if actions with respect to such products, services or investments (or their equivalents) would be ineffective or inappropriate.

- In the event the President decides to exercise such "cross-over" authority, he must afford an opportunity to be heard to both foreign and domestic interests affected by such a decision.
- In deciding to take action under Section 301, the President should be required to take into account the impact of the action on the national economy and the international economic interests of the United States. In addition, the President should be required to conduct a review (on not less than a biennial basis) of each action taken under Section 301 in order to determine its effectiveness and whether continuation of such action is in the national interest.
- The President should be required to rescind an action taken by him under Section 301 if (1) he determines that continuation of the action is not in the national interest, or (2) the offending act, policy, or practice is eliminated by the foreign country.

Rationale - We must be careful not to undermine our international obligations under the GATT and other international agreements or to trigger escalating retaliation. Negotiation is the most effective remedy for resolving problems and avoiding foreign retaliation. However, in order for the President to have negotiating leverage, he must have authority to take affirmative action in the event negotiations fail. Imposition of restrictions on foreign imports, services or investment is always risky in terms of provoking escalating retaliation. The risks are even greater in the event there is a need to impose restrictions on products, services or investments not involved in the original action under Section 301. Such "cross-over" authority is, however, necessary in order to provide the President with a wide range of responses in order to enhance his negotiating leverage. Because of these risks, the President's authority should be carefully circumscribed in order to protect the national interest as well as the private parties affected.

C. Issue - Should the Executive Branch be required to undertake studies or submit reports which (1) identify foreign barriers and (2) recommend actions to obtain their elimination?

BR Position - BR supports a program to identify foreign barriers to market access. Such a program should provide for private sector input and a procedure for assuring confidentiality of information. BR does not support disclosure of actions to deal with removal of trade barriers.

Rationale - The business community and the Executive Branch need more guidance and encouragement to initiate investigations under existing U.S. trade laws. An inventory of barriers will focus the attention of the Executive Branch and the business community on the need to take action to remove foreign barriers. However, a public report on what actions are planned could reduce negotiating flexibility and undermine chances for success.

II. NEGOTIATING AUTHORITY.

A. Issue - Should the President be given specific authority to negotiate bilateral or multilateral agreements with respect to foreign direct investment, services and high technology?

BR Position - BR supports legislation which would give the President specific negotiating authority in these areas. Any such legislation should -

- Provide, where appropriate, for sectoral negotiations, in accordance with Section 104 of the Trade Act of 1974.
- Provide that, while multilateral agreements may be preferable, bilateral agreements are, as recognized in Section 105 of the Trade Act of 1974, entirely appropriate.
- Provide that where negotiations result in a new reduction of barriers, the United States may apply conditional Most-Favored-Nation status under the ground rules set out in Section 126 of the Trade Act of 1974.

Rationale - Currently there are few international agreements in any of these areas. A statutory provision which would specifically authorize the

President to negotiate agreements in these areas would both clarify Presidential authority and encourage such activity.

III. LEGISLATION NEEDED TO FACILITATE NEGOTIATIONS WITH RESPECT TO SERVICES.

A. Issue - Is there a need to establish a services industry development program in the Department of Commerce?

BR Position - There is a need for a program which would develop the data needed for formulating services industry negotiating strategies and objectives. There is also a need to allocate a fair share of existing export promotion programs, such as Export-Import Bank financing, to service industries.

Rationale - Preparation of negotiating positions and objectives requires a systematic analysis of foreign barriers as well as federal and state regulation of the service industries.

B. Issue - Should Section 301 be amended to provide more explicitly that service sector trade is covered?

BR Position - Section 301 appears to already cover service sector trade. In order to clear-up any ambiguity, however, Section 301 should be amended to clarify that coverage.

Rationale - The President should have unambiguous authority to use Section 301 to remove unfair trade practices in service sector trade.

C. Issue - How is coordination with state agencies best achieved so as to ensure that negotiated agreements will receive necessary ratification?

BR Position - Current legislative proposals which would require the U.S.T.R. to consult regularly with representatives of state governments are not sufficient in that this mechanism would not adequately ensure that any negotiated agreements would be approved by the states. Consideration should be given to the establishment of an intergovernmental task force which would work with the states to develop appropriate procedures to ensure expedited ratification of trade agreements in those areas subject to state regulation.

Rationale - Again, an intergovernmental task force would provide the best vehicle for developing procedures which will ensure that investment agreements are expeditiously implemented.

V. ROLE OF INDEPENDENT AGENCIES.

A. Issue - Should independent agencies be authorized to consider foreign practices in their licensing procedures and to restrict foreign investment, services, or imports on the basis of denial of equal access?

BR Position - Such broad and unguarded authority should not be entrusted to independent agencies.

Rationale - Where some response to foreign business is needed, it should be the President, not the independent agencies, who takes such action. This approach was endorsed in the legislative history accompanying the Trade Act of 1974. A particular agency will not be cognizant of all the foreign policy and national security implications of trade actions. A unilateral decision by an independent agency to offset foreign barriers in one sector could trigger foreign retaliation in a sector more important to the economic interest of the United States as a whole or could jeopardize on-going negotiations.

VI. SPECIAL ANTIDUMPING AND COUNTERVAILING DUTY TREATMENT.

A. Issue - Do we need to establish a new cause of action based on subsidization or unfair pricing with regard to services or high technology products?

BR Position - These proposals are inappropriate.

Rationale - Concepts of antidumping and countervailing duties applicable to tangible goods may not be easily transferable to services. For most services there are not reliable means to measure or establish that an unfair trade practice has occurred. High technology products are already covered by existing antidumping and countervailing duty laws. No sector should be given any special treatment under the antidumping or countervailing duty laws. If these laws are not working, we should overhaul them - not alter them piecemeal.

Rationale - Procedures limited to consultation with the states prior to and during negotiations will not provide adequate assurances to our trading partners that negotiated agreements will receive the necessary domestic ratification. Such lack of assurance will make our trading partners reluctant to go through the strenuous effort of negotiating agreements with us. An intergovernmental task force which would work with the states to establish ratification procedures prior to negotiations is the most effective vehicle for ensuring that trade agreements will be expeditiously implemented.

D. Issue - Do we need additional tools by which to monitor and regulate foreign services - i.e., registration procedures?

BR Position - This proposal is inappropriate.

Rationale - A registration requirement is a burdensome one. This requirement could invite retaliation by trading partners or, at a minimum, provide an excuse for restrictions on U.S. firms abroad. In addition, many foreign service sectors are already regulated by the states or by federal agencies. This new registration proposal may be duplicative of these procedures.

IV. LEGISLATION NEEDED TO FACILITATE NEGOTIATIONS WITH RESPECT TO INVESTMENTS.

A. Issue - Should Section 301 be amended to explicitly provide the President authority with respect to investment?

BR Position - Section 301 should be so amended.

Rationale - As in the case of services, there are few international agreements to protect the interests of U.S. investors abroad. An unambiguous extension of the President's Section 301 authority to cover investment with respect to unfair practices is needed to provide the President with negotiating leverage.

B. Issue - How is coordination with state governments best achieved so as to ensure that negotiated agreements will receive necessary ratification?

BR Position - An intergovernmental task force should be established to develop mechanisms to harmonize state investment incentives and other relevant programs with international agreements.

STATEMENT OF J. PAUL STICHT ON BEHALF OF THE BUSINESS ROUNDTABLE TASK FORCE ON INTERNATIONAL TRADE AND INVESTMENT BEFORE THE SENATE FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE

MARCH 1, 1982

I am Paul Sticht, Chairman and Chief Executive Officer of R. J. Reynolds Industries, Inc. I am pleased to be here today in my capacity as a member of the Business Roundtable Task Force on International Trade and Investment. The Business Roundtable consists of almost 200 companies. Nearly all of them have substantial international operations.

I am accompanied today by Charles S. Levy of the law firm of Mayer, Brown & Platt. Mr. Levy serves as counsel to our Roundtable Task Force.

My company has total revenues of over $12 billion, over 40 percent of which are generated in our international marketing and trading activities. Some 46 percent of our 83,000 employees work outside the United States and about 43 percent of our identifiable assets are used to support our international business activities. We market our products and services in 160 countries and territories, and we own or operate facilities in 39 countries outside the United States.

I also serve as a director of three other companies, all of which are engaged in substantial international business. For the last six months, I have been a director of the Chrysler Corporation. My personal involvement in international trade extends back to the late 1940's.

The Business Roundtable welcomes the Subcommittee's hearing. It underscores the significance of the upcoming GATT Ministerial Meeting in November.

My remarks today represent an overview of the Business Roundtable's position on the GATT Ministerial. Over the next few months, the Task Force will be developing more specific recommendations. We will welcome the opportunity to hold further discussions on this important matter with this and other Committees of the Congress, and with the Executive Branch.

My statement on behalf of the Roundtable stresses four critical needs for the U.S. approach to the GATT Ministerial:

(1) The need for the United States to display a strong commitment to GATT;

(2) The need for the Ministers to address the adequacy of GATT;

(3) The need to consider new international trade issues for inclusion in GATT; and

(4) The need for the United States to consider supplements to GATT and U.S. law.

I. THE NEED FOR A STRONG COMMITMENT TO GATT

Let me start by emphasizing the need for a strong multinational commitment to GATT.

Following World War II, the United States provided the leadership in developing international economic policies designed to foster expansion of trade and investment through mutually acceptable rules. Although problems have surfaced, to date those policies have been generally successful.

GATT, with its emphasis on multilateral, non-discriminatory reduction of trade barriers is one of those policies. Another is the IMF, with its focus on the maintenance of a stable system of international payments. These institutions and their rules were designed to prevent a recurrence of the self-destructive trade and monetary policies of the 1930's.

The commitment to GATT has led to a reduction of trade barriers. This, in turn, has helped foster an unparalleled expansion of trade and international investment. World trade has expanded fivefold in the last decade. In the United States, exports now account for more than 12 percent of GNP.

On balance, the record of GATT is a good one. Under its auspices there have been seven rounds of multilateral trade negotiations. These have produced significant tariff reductions. Other multilateral agreements have established rules which limit practices that distort trade, such as government subsidies, product standards and unfair pricing. The Codes negotiated at the Tokyo Round were a major step forward in protecting firms and workers against unfair trade practices.

But now the success of GATT is being challenged. New restraints on trade are being substituted for tariffs. Today, world trade faces even more complex and troublesome obstacles in the form of non-tariff barriers and subsidies.

Let me give you an example from my own company's experience. I know some members of this Subcommittee are aware of the significant non-tariff barriers encountered in trying to open the Japanese home market to U.S.-manufactured cigarettes. Despite outstanding assistance from the U.S. Trade Representative, our industry has made minimal progress in securing satisfactory market access.

I once told a group of visiting Japanese industrialists what would happen if we restricted the sale of Japanese cars in the United States as they have restricted the sale of U.S. cigarettes in Japan. Their cars would be sold in only one of every 10 U.S. dealerships. And, until recently, the man who sings, jumps and clicks his heels in the Toyota ads would be doing his U.S. TV spots in Japanese.

This kind of problem is why serious questions are being raised about the good faith efforts of our trading partners in implementing the MTN Codes and fulfilling their GATT commitments. The questions are justified. They need answers. The problem is compounded by the growing recognition that GATT's membership may not be broad enough.

The multilateral trading system is threatened by protectionist pressures here and abroad. Growing tensions between trading partners could lead to a break in unity. To help prevent this, the United States must display an extraordinary commitment to GATT. The Business Roundtable urges the United States to assert the political will and leadership that are needed to ensure the survival and strength of our multilateral trading system. The U.S. must insist on no less a commitment by other trading nations.

II. THE NEED TO ADDRESS THE ADEQUACY OF GATT

GATT is far from perfect, and its friends -- like us -- should take the lead in identifying and dealing with its imperfections.

First, GATT needs to try again to provide a meaningful adjustment mechanism for countries faced with a surge of imports of a particular product. Existing GATT provisions are not adequate and the Tokyo Round failed to agree on a "safeguards code". As a result, nations sometimes find they have to look for relief outside GATT. They turn to such devices as voluntary export restraint agreements or international orderly marketing agreements. If this trend continues, the multilateral trading system will be undermined further.

Second, GATT must ensure that the MTN Codes are being properly implemented and that GATT procedures for settling disputes are adequate. These Codes and procedures lie at the heart of GATT's effectiveness and viability. If they work, they can deal effectively with a significant number of problems arising from government intervention. But if they do not work as expected, if governments prove unwilling to use them, or if countries found to be in violation of GATT do not consider themselves bound by GATT decisions, government intervention will continue to undermine GATT.

The upcoming GATT Ministerial offers the opportunity to get to the core of these problems. The Business Roundtable urges the United States to take the leadership in a thorough review of GATT's structural and operational strengths and weaknesses.

III. THE NEED TO DEAL WITH IMPORTANT NEW INTERNATIONAL ISSUES

In the past few years, a number of new issues have demanded the attention of the international community. Now they warrant the attention of the GATT Ministers, who should focus on their appropriateness for consideration in GATT. These issues include: (a) trade in services; (b) trade-related investment issues; (c) trade in high technology goods; (d) agricultural trade; and (e) the participation of developing countries in the multilateral trading system.

From the vantage point of the United States, services, agriculture, and high technology goods are bright spots in our international trade position. The United States needs to build on those strengths; we need to act now to further the positive development of these important trade sectors, and thereby avoid being faced with the need for corrective action later.

Because these issues are so important to the United States, a process needs to be set in motion to develop effective rules. To that end, the Business Roundtable recommends that GATT establish work programs to deal with these issues and to evaluate the adequacy of existing trade and investment rules and mechanisms. An equally important task for the work programs will be to determine the framework for future negotiations.

IV. THE NEED TO CONSIDER SUPPLEMENTS TO GATT AND U.S. LAW

For some time, questions related to international trade and investment have been on the "back burner" in the United States. Now, I am pleased to note, a long-overdue debate has started on the fundamental principles of U.S. trade and investment policy. It embraces the future role of GATT as both an institution and as a body of rules. It addresses the adequacy of the Executive Branch's trade negotiating authority. It raises the need to expand the coverage of relevant U.S. trade laws to new sectors.

With respect to the multilateral framework for trade and investment, the debate may produce a recognition that GATT should be supplemented by either new or stronger multilateral codes and mechanisms. At this point, it is not easy to conceive of the form or substance of such supplements. The basic principles of GATT are the only ones many of us know. But, all of us must look at that system critically and be prepared to explore new ways to maintain its vitality.

As part of the debate, legislation has been introduced which concentrates on the adequacy of U.S. trade laws. The Task Force is in the process of analyzing that legislation. Part of our analysis will focus on whether the United States' real problem in many instances is not the lack of adequate authority, but a lack of political will to use the tools already available.

In addressing the coverage of U.S. trade laws, there appears to be a need to include new sectors in some of those laws. We support this initiative and look forward to working with the Congress in determining the proper scope of legislation.

Mr. Chairman, again let me thank you for the opportunity to appear here this morning. I look forward to answering your questions.

STATEMENT
OF
JOSEPH E. CONNOR
CHAIRMAN
PRICE WATERHOUSE

CONCERNING
U.S. POLICY ON INTERNATIONAL
TRADE IN SERVICES
AND
S.2058, THE TRADE IN SERVICES ACT OF 1982

SUBMITTED TO

THE SUBCOMMITTEE ON INTERNATIONAL TRADE
AND
THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE SENATE COMMITTEE ON FINANCE

MAY 26, 1982

UNITED STATES POLICY ON INTERNATIONAL TRADE IN SERVICES

Price Waterhouse is a professional service organization providing accounting and related services throughout the world. Thus, we are more than casually interested in national policies and actions to strengthen the position of the service sector of our economy to compete effectively in international markets. Moreover, we believe the United States should follow an aggressive course of action to promote, to encourage, and to facilitate trade in services, as well as in goods, to improve our country's international economic competitiveness.

With one important exception, we believe S.2058 will provide the framework for a much needed trade policy by encouraging international negotiations to liberalize trade in services, by strengthening current mechanisms to combat unfair trade practices, and by expanding promotional efforts. On the other hand, we do not believe that the so-called "reciprocity" provision is essential to implement an improved policy for trade in services.

The Importance of the Service Sector

The ability of U.S. businesses to compete in world markets has been enhanced through such mechanisms as the General Agreement on Tariffs and Trade (GATT), government export promotion programs, and legislated procedures for combatting unfair trade practices by foreign businesses and governments. These represent no small accomplishment, but they fall short in that they are oriented largely towards the goods-producing sector. Important as international trade in goods is to our economy, international trade in services is also significant, and warrants greater attention.

The statistics on the role services play in our economy both domestically and internationally speak for themselves. According to Commerce Department data, in 1980, 71 percent of the non-agricultural work force was employed in the service sector. In that same year, services accounted for $695.7 billion in GNP, as opposed to $665.2 billion for goods.

Furthermore, services exports are becoming increasingly important to this country's international trade position. Over the last decade, growth in international trade in services has greatly helped to offset the enormous merchandise trade deficits which began to appear after the oil crises of the early 1970s. For example, the service sector added a net $35 billion to the 1980 balance of payments, while trade in goods accounted for a deficit of approximately $30 billion.

There are indications that other countries around the world are also experiencing the same dramatic growth in the service sector; and most are expanding their services exports to some degree, reflecting the growing worldwide market for services of all types. The world market for services rose from $85 billion to $300 billion over the past decade. Over the past three years, trade in services has been increasing more than twice as fast as trade in goods.

With the increased opportunities provided by an expanding world market for services has come increased competition. The United States is currently the leading exporter of services in the world. But our relative position is declining as other countries become more and more successful at marketing their services abroad. Probably the most disturbing change has been a dramatic drop in the U.S. share of receipts in the category of services which includes accounting, advertising, banking, business and legal services, construction and engineering, and insurance. The principal beneficiaries of this loss appear to be West Germany, France, Japan, and the non-oil-exporting developing countries.

Barriers to Trade in Services

An especially negative aspect of the increased competition in services trade is growing protectionism. In attempting to expand services exports, U.S. companies are encountering more and more non-tariff barriers to market access created by countries attempting to protect their domestic services industries from foreign competition. At the same time, these countries are taking advantage of the free trade policies of countries like the United States in order to increase their own services exports.

Examples of the types of barriers which have been encountered include:

- Prohibition on the establishment of local operations by a foreign firm;
- Complex licensing procedures which apply only to foreign service firms;
- Nonrecognition of professional licenses to practice awarded in other countries;
- Discriminatory restrictions on the level of advertising by a foreign firm;
- Governmental subsidy of domestic service firms;

- Restrictions on government procurement which favor domestic firms; and
- A wide variety of restrictions falling under the heading of barriers to Transborder Data Flow (TBDF), including customs rules which prohibit foreign accounting firms from bringing in computer tapes, and laws preventing use of foreign service bureaus for information processing or retrieval.

Essentially, the service sector is very much where the goods producing sector was in the early 1970s, before the latest round of multilateral trade negotiations to reduce non-tariff barriers, the trade acts of 1974 and 1979, and increased export promotion for goods. It is restricted in its ability to export. It needs protection from the unfair trade practices of other countries, and its export potential is being undermined. Without the U.S. government's active support, our services industries will not only fail to improve their competitive position abroad, they will continue to lose ground. Trade in services is important not only in its own right, but it also supports and facilitates trade in goods. The two go hand-in-hand. It is imperative, therefore, that prompt action be taken to overcome our neglect of the service sector.

Legislation is Needed

We applaud the introduction of S.2058, support its objectives, and urge its passage with one major qualification, as discussed below in our section-by-section comments.

Section 3: Negotiation of International Agreements Concerning Trade in Services

The problem of barriers to trade in services is greatly complicated by the lack of an international set of rules comparable to GATT. In the absence of such a multilateral mechanism, bilateral negotiation or action on a case-by-case basis are the only methods available to the U.S. government for resolving services trade disputes and eliminating restrictive practices. Success is heavily dependent on the goodwill of the country involved and the degree of economic leverage the U.S. can exert.

Section 3 of S.2058 would set in motion the process of developing a "GATT for services" by expressly establishing international negotiations to remove barriers to trade in services as a clear objective of U.S. trade policy. We fully support U.S. efforts to have services included on the agenda of the GATT Ministerial in November of this year in order to initiate development of a work program for negotiations on trade in services. Ambassador William E. Brock, the U.S. Trade Representative, has indicated that a legislative mandate similar to the one contained in S.2058 would significantly strengthen our bargaining position at the Ministerial. This opportunity must not be lost.

The ultimate objective should be a framework of multilateral rules and procedures governing international trade in services. While attention is being given to initiating multilateral negotiations, the possibility of bilateral negotiations with our trading partners should not be ignored.

In developing the framework for negotiations, the guiding principle should be "national treatment." That is, each country should accord foreign service firms, regardless of country of origin, the same market access that is accorded to domestic service firms. National treatment has long been the established policy in the United States, and we should be aggressive in persuading other countries to follow our example.

Ambassador Brock has summed up this position very well:

> In our view, the primary and preferable method for obtaining substantially equivalent market access should always be to seek liberalization of foreign markets rather than to raise equivalently restrictive barriers of our own. Our goal should be to move our trading partners forward through negotiations to a level of market openness more similar to our own.

This is the policy we followed in negotiating GATT for goods. We should do no less for services.

Section 4: Removal of Unfair Trade Practices in Service Sector Trade

Under Section 301 of the Trade Act of 1974, as amended by the 1979 Trade Agreements Act, the President is empowered to take steps to curtail unfair trade practices by foreign governments, such as violations of existing trade agreements, by suspending the application of benefits of trade agreement concessions, imposing duties or other restrictions on imported products, or imposing fees or restrictions on the services of the country in question.

Since passage of the Trade Agreements Act, there has been disagreement over whether Section 301 conveys the authority to impose fees and restrictions on suppliers of services as well as on the services themselves. Section 4 of S.2058 clarifies this by specifically extending coverage to suppliers. We support this extension. If the United States is fair and open in its trading practices, it is reasonable that we should demand similar behavior from others. S.2058 further enhances the ability of service firms to seek relief under Section 301 by providing a more specific definition of services.

It appears that service companies have not generally taken advantage of the Section 301 mechanism. It is hoped that the extension of Section 301 authority to cover foreign suppliers of services, and the additional clarification of the applicability of Section 301 to the service sector, will encourage service firms to utilize this important weapon against unfair trade practices.

Section 5: Interagency Coordination of Service Sector Trade Policy

Section 5 of S.2058 seeks to accomplish two primary objectives. First, it would give the United States Trade Representative lead responsibility for developing, coordinating and implementing U.S. policies on trade in services. This is a sound approach. While input may come from all concerned entities or parties, it is important that the U.S. government speak with a single authoritative voice on trade in services issues. We believe the Executive Office of the President is the appropriate residing place for such authority.

Section 5 would also authorize establishment of a Services Industry Development Program in the Department of Commerce to develop economic policies to improve the competitiveness of U.S. service firms, promote services exports, and develop a services industry data base. This is a much needed program and we encourage its development.

We believe the development of a services data base is crucial to the development of services trade policies and promotion of services exports. Information collected on services is not nearly as complete and comprehensive as that collected on the goods-producing sector. There is substantial disagreement as to what should be designated as services. Estimates of the percentage of GNP and exports accounted for by services also vary, based on how services are defined.

Two recent studies commissioned by the USTR and the Departments of Commerce and State--one to collect and analyze current U.S. data on services, and one to recommend improvements in data collection activities--make it clear that a major overhaul in data collection is required to properly define and describe the service sector. S.2058 should ensure that this recommendation is implemented.

Section 6: Consideration by U.S. Regulatory Authorities of Market Access Accorded by Foreign Countries to U.S. Service Sector Industries

Section 6 of S.2058 would direct regulatory agencies with authority over services industries to consider the treatment accorded U.S. service firms in the country in question when making decisions on whether to grant U.S. market access to any foreign service supplier. We have grave concern about the appropriateness of this so-called reciprocity provision.

Section 6 is not in keeping with the basic objective of S.2058, which is to accord trade in services the same stature as trade in goods in terms of promotion, protection and national and international policymaking. U.S. policies and activities concerning trade in goods are governed by the principle of national treatment. The same principle should apply to trade in services.

Whether the United States should abandon national treatment and retaliate against the restrictive trade practices of other countries by creating similar restrictions is a serious question which should be considered separately from the trade in services issue. A time may come when unfair trade practices by our trading partners will force us to resort to protective measures in some instances. Before we take such a step, however, we should exhaust all other possibilities. The U.S. should aggressively pursue a free trade environment by adhering to GATT and acting to ensure that our trading partners do likewise, by working to create a similar mechanism for services, and by fully utilizing the authority under Section 301 to combat unfair trade practices in both goods and services.

In addition to the policy question, we believe it would be unwise to give independent regulatory agencies the authority to develop trade policy on an ad hoc basis, possibly in contradiction with the basic policies of the Administration. This could only complicate international negotiations. The President and his designated representatives must have sole authority in the Executive branch to develop and implement international trade policies, subject, of course, to the necessary approval of Congress.

* * * * *

In summary, we believe S.2058 is a necessary first step in focusing attention on trade policies and practices in the service sector. In implementing the provisions of S.2058, we should strive to ensure that the delicate scale of international justice is not tipped in one direction or another. Restraint, restriction, and reactionary competitive practices by any affected party inevitably will result in a retaliatory response. Surely, in the long run, this is a waste of effort to all.

STATEMENT OF RO GRIGNON
EXECUTIVE VICE PRESIDENT, TELEVISION
TAFT BROADCASTING COMPANY

BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE

UNITED STATES SENATE

on S. 2051

Mr. Chairman:

My name is Ro Grignon. I am Executive Vice President, Television of Taft Broadcasting Company and have held that position since June of 1979. I am filing this statement on behalf of Taft Broadcasting Company, a diversified communications and entertainment company, owning and operating 7 television stations and 12 radio stations, including WGR-TV, WGR-AM, and WGRQ-FM in Buffalo, New York. Each of those border stations transmits signals which are received in Canada in addition to the United States.

In addition to this statement, Taft has joined in the statement of U.S. border broadcast licensees presented by Leslie G. Arries, Jr. to this Subcommittee on Friday, May 14. Like all of the broadcasters joining in that statement, the WGR stations have been injured very materially since the enactment by Canada of Canadian bill C-58 (section 19.1(1) of the Canadian Income Tax Act) in 1976. This injury will continue so long as Canada retains legislation making nondeductible for Canadian income tax purposes the purchase by Canadians of advertising on U.S. broadcating stations designed principally to reach Canadian markets.

I will not repeat here the historical account of the futile attempts to get the Canadian Government to negotiate and reconsider its position. Taft joins in the facts recounted in Mr. Arries' statement and the solutions requested to be considered. Specifically, we believe that mirror legislation, S. 2051, pending before this Subcommittee, must be enacted as proposed by the President and the sponsors of the legislation. That action should be taken at the earliest possible date in order to make clear to the Canadian Government the seriousness of national concern of the Congress and the Executive and to underline the conviction that the integrity of Section 301 of the Trade Act of 1974 will be maintained.

We feel it is appropriate to file this separate statement at this time in view of the fact that Taft and certain other border broadcasters did not originally join in the Section 301 Complaint or Supplemental Statement filed in that proceeding. Rather, we joined in comments filed in that proceeding on November 29, 1978, indicating our agreement that the practice complained of was an unreasonable discrimination against U.S. commerce and a burden and restriction on that commerce, but that we were not convinced at that time that retaliation would achieve the desired result. In view of the total refusal since that time of the Canadian Government even to negotiate the issue, our position with regard to retaliation has changed. We believe it is now appropriate to ask, as a minimum, for mirror legislation with additional sanctions needed to make it meaningful. We wish to point out that we recognize that without other sanctions such legislation would have impact on Canada only in the Detroit/ Windsor market and perhaps a few other minor instances. This would seem to make it appropriate to consider steps relating to certain other communication-related concerns between the United States and Canada, such as the questions about satellite links and data transmission systems and equipment.

I would also like to call to the attention of the Committee some of the rationale which we believe justifies a firm U.S. stance. United States border television stations are heavily viewed in Canada. This is so because their program schedules are popular and their signals are widely available for viewing in Canada. This is accomplished not only by the off-the-air reception in the immediate vicinity of the United State border, but also because signals of United States stations are carried throughout large sections of Canada, both near the border and hundreds of miles away, by Canadian cable television systems. Indeed it is undisputed that the Canadian cable television industry is dependent for its existence on the ability to distribute the signals of the United States border stations.

We believe that a majority of Canadian homes using television now consist of subscribers to Canadian cable television systems. Total Canadian cable television revenues are more than six times the total Canadian advertising revenues paid to United States border stations in the best year enjoyed by those stations, and the Canadian cable television industry profits alone are at least 250% of those Canadian revenues for United States border stations in the best year.

Moreover, the very same Canadian Government which forbids tax deductibility for the express purpose of seeking to prevent United States stations from deriving any Canadian television revenues also expressly licenses its cable television systems to carry the United States border stations. Thus it is explicit Canadian Government policy that the services provided by United States border stations should be enjoyed by the Canadian public and should support a thriving Canadian cable television industry, but that at the same time those United States stations should be barred to the extent possible from deriving any revenue from the benefit they confer on the Canadian public and the Canadian cable television industry.

The Canadian Government defends its policy essentially on the ground that it is not merely a tax policy but one of protection for Canadian culture against pervasive intrusion from the United States. There is concern in Canada because a substantial majority of television viewing in Canada is to United States programs, and because United States border stations have large audiences at the expense of Canadian originated programs and Canadian stations.

We support the free flow of ideas, information, and programs in both directions across the border, just as we favor the free flow of trade and commerce. We do not believe that the long run interest of either country lies in erecting artificial barriers to trade in goods, services, information, or entertainment. Despite this view, the Canadian Government is not bound to be an advocate of free trade in culture and ideas. We submit, however, that the enactment of Bill C-58 was an entirely inappropriate and unreasonable step.

First, however desirable the Canadian Government's objective, it should not be achieved by a procedure which assures both that the Canadian public and the Canadian cable television industry will continue to benefit fully from the service provided by the United States border stations and that those stations will be deprived of any reasonable opportunity to derive revenues from providing that service. This is not a reasonable position for the Canadian Government to take, even if it were effective in protecting Canadian culture.

Moreover, we do not see how Bill C-58 can have any appreciable effect in protecting Canadian cultural identity. Bill C-58 does not remove a single United States program from distribution in Canada or a single United States television signal from carriage on a single Canadian cable system or from reception off the air by a single Canadian viewer. The only effect of C-58 is to reduce drastically the number of Canadian advertisements, produced in Canada, on behalf of Canadian products and services, that are carried on United States border stations and directed at Canadian markets. Thus, there is no direct impact whatever on the export of United States "culture" to Canada.

Nor would there be any material indirect effect in that direction. It is true that the United States border stations are suffering losses in revenues which are very substantial to them, and it is also true that one reason advanced by the Canadian Government for adopting this policy was to divert those revenues toward the further development of Canadian program production. The most elementary analysis, however, makes it clear that such diversion can have no material effect upon the ability of the Canadian program production industry to compete more successfully than before with the United States program production industry.

The maximum amount of Canadian television revenues derived by United States border stations in any year was several million dollars. After the payment of commissions to Canadian agencies and representatives, the maximum amount of dollars flowing from Canada to the United States was estimated for 1976 at approximately $14 million. The information available to date suggests that the reduction so far in Canadian advertising on the United States border stations has been over 60%. Meanwhile, increased viewing and inflation mean that Canadian revenues lost annually by United States stations as a result of C-58 have grown materially. However, because of C-58, Canadian businessmen are now paying substantial additional Canadian income taxes in connection with the purchase of advertising on a nondeductible basis from United States border stations. Those taxes go into the general revenues and are not available to assist the Canadian production industry. Even if it is substantial, the basic analysis would be unchanged. There is no evidence that such an amount or even a substantial fraction of it has actually gone or will go to assist Canadian production. Even if it had, it would be ludicrous to think that the addition of that level of revenues involved could make any material difference in the competitive balance between United States and Canadian program production industries. Thus, the Canadian policy is not only unfair, it is ineffectual.

We can see only two basic courses which could be taken to promote the Canadian Government's objectives. The first would be to make substantial efforts to improve and expand the Canadian production industry with the objective not only of serving the public, but also of exporting to the English-speaking world, thereby increasing the revenue base to a point where substantially more effective competition with the United States industry would be possible. Such an approach, which we advocate and have been glad to explore ways of supporting actively, would necessarily look primarily to the United States for its major external customers. Such an approach would also appear to depend upon the existence in the United States of a market unhampered by artificial trade or other barriers. It would be inconsistent with this approach, we submit, for C-58 to continue in effect.

This is a matter which clearly can and should be settled on a reasonable basis by negotiations between the two countries. Efforts at negotiations, which we have sought and fully support, have been made by representatives of the United States. The Canadian Government has repeatedly and consistently taken the position that the United States border stations have no legitimate interest at stake, that the matter is entirely a matter of domestic Canadian policy, and that it is non-negotiable. We submit that this position taken by the Canadian Government is entirely unreasonable and that the United States Government should make every effort to persuade the Canadian Government to enter into negotiations, consistent with the long-standing friendly relationship between the two countries.

In summary, we believe that there is little or no logic to the position of the Canadian Government and that the offending statute is not effective to the desired end but results only in unfair protection of advertising revenue for competing Canadian media. We recognize that the issue remains a very difficult one politically within Canada, but the only sensible solution will be one brought about by agreement between the countries involved. However, it has become evident that without a clear indication of resolve on the part of the United States to bring about a change in the current stalemate no negotiations will take place or be effective. Canada and the U.S. are each others major trading partners and most valued allies in security matters for

North America. It must be our hope that the legislation before this Subcommittee will direct the Canadian Government's attention to the seriousness of the problem and the unfairness of the approach that it has taken. If Bill C-58 is not repealed, effective sanctions by the United States against the offending provision seem to us to be justified and necessary.

Respectfully submitted,

R. Grignon

Ro Grignon, Executive Vice President
Television
Taft Broadcasting Company

May 19, 1982

Statement of

The International Engineering and Construction Industries Council

To The

Subcommittee on International Trade

Finance Committee

United States Senate

May 25, 1982

on

S. 2058

"The Trade In Services Act of 1982"

STATEMENT FOR THE RECORD

Mr. Chairman, Members of the Committee:

The International Engineering and Construction Industries Council (IECIC) welcomes this opportunity to voice its support for the general thrust of S. 2058, the "Trade In Services Act of 1982." The IECIC is composed of the American Consulting Engineers Council, the Associated General Contractors of America, the National Constructors Association and the American Institute of Architects. Together these organizations represented over $5 billion worth of design and construction work last year and significantly contributed to the positive components in the U. S. balance of trade. This is a minimum estimate and it could be substantially higher.

The theme of IECIC's VI Action Conference held last October was "A New Commitment: Rebuilding American Exports." We have seen, since that date, increased attention to services exports by the Administration and in the Congress with the introduction of legislation such as S. 2058 in the Senate, H.R. 5383 in the House, and the recent unanimous Senate passage of S. 1233, the Services Industries Development Act. U. S. Trade Representative William Brock and Department of Commerce Secretary Malcolm Baldrige participated in this conference and both acknowledged the important contribution our industries make to U. S. trade as engineering and construction overseas contracts are often the lead-in for exports of related U. S. goods and services.

Many of the major problems raised at the IECIC Conference are addressed in S. 2058. IECIC members are looking for further legislative and executive action in the areas of competitive export financing, effective export promotion policies, reduction of international protectionist practices and modification of some existing legislation such as the Foreign Corrupt Practices Act, antitrust regulations and antiboycott laws.

IECIC applauds the stated purposes of the Trade In Services Act of 1982. Integration of service sector trade issues in U. S. economic and trade policy is long overdue. This becomes readily apparent when one analyzes the positive and negative components of the U. S. balance of trade. Section 3 of this bill will place the negotiation of reductions in barriers to trade in services in its proper priority among the top of U. S. trade issues. Moreover, Section 4 provides the needed clarification of the term services under the definition of unfair trading practices in Section 301 of the Trade Act of 1974.

We have great confidence in placing the responsibility of coordination and implementation of U. S. trade in services policies with the United States Trade Representative and the Trade Policy Committee as suggested in S. 2058. As Ambassador Brock stated in his testimony before you, he has spent an extraordinarily large amount of his time on the question of negotiating international barriers to trade in services through the GATT and he should be commended for these efforts.

The design/engineering/construction industry began working with the U. S. Trade Representative's Office in 1980 to identify obstacles and problems encountered by engineers, contractors and consultants in working overseas. This information was then provided by the U. S. Government to the OECD for a pilot study on this sector. We viewed this effect as an important first step in determining the barriers encountered by our industry. IECIC will continue giving the Ambassador and his staff the support they need.

In regard to the creation of a service industries development program in the Department of Commerce, Section 5, IECIC believes the proposed functions of such a program can effectively be carried out, giving these issues the coordination they have often lacked in the past. We are particularly interested in giving the Department the necessary support to develop a reliable and useful data base for services.

We are pleased that Section 5(c)5(e) provides for an analysis of the adequacy of U. S. financing and export promotion programs. We believe there should be greater recognition of the need to promote service industries as part of U. S. trade policy and the need to allocate existing resources to service industries as well as goods. For example, in 1980, the Export-Import Bank of the U. S. provided only $93 million in direct credits to support service contracts, which represents less than 2 percent of total direct credits authorized. Given the important role that services play in export trade, we believe that greater emphasis should be given to financing of service exports.

We also approve of the parts of Section 5 which recognize the need to analyze U. S. Government disincentives to services. We believe that this is extremely important. The U. S. Government imposes significant barriers to American engineering/construction industries — such as the Foreign Corrupt Practices Act, conflicting antiboycott laws and antitrust policies. We strongly support these efforts and encourage congressional action to remove these disincentives.

IECIC supports passage of S. 2058, however, we have one major reservation. We recommend the deletion of Section 6 of this bill in order to fully separate the issue of reciprocity from trade in services. We support the efforts of this subcommittee and the purposes and proposed actions found in S. 2058, with the exception noted above.

We agree with Ambassador Brock that it would be helpful for Congress to pass this legislation before the GATT Ministerial Meeting in November.

Productive bilateral and multilateral negotiations will increase our competitiveness and we believe legislation such as S. 2058 strengthens the U. S. position in such endeavors.

Raymond J. Hodge

Raymond J. Hodge
IECIC Chairman

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DENNIS J. BUNYAN
CHAIRMAN
(212) 308-0546

May 25,1982

The Honorable John C. Danforth
Chairman
Subcommittee on International Trade
Committee on Finance
United States Senate
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Trade in Services Act of 1982 (S. 2058)

Dear Mr. Chairman:

On behalf of the Institute of Foreign Bankers, whose membership includes over 216 foreign banks from 51 countries consisting of the great majority of foreign banks in the United States, I am submitting these comments on the "Trade in Services Act of 1982", S. 2058. That bill, as introduced by Senators Roth, Chafee, and Inouye, is designed ". . . to improve the treatment accorded services in our international trading efforts and to move services issues to center stage in global trade discussions."

There has been an increasing shift in international trade from goods to services in recent years, and the United States, as the traditional leader in the services industry, has been a major beneficiary of the trend. Nevertheless, existing procedures for addressing international trade issues focus predominantly on merchandise trade, with the result that trade in services has received little attention. Accordingly, it is understandable that your Subcommittee recognizes a need to examine issues relating to trade in services issues.

However, S. 2058 is one of a number of bills that would apply the concept of trade reciprocity to federal regulation of U.S. services industries, including the banking industry. Specifically, Section 6 of S. 2058 would require U.S. agencies to" take into account" access of U.S. suppliers to the relevant foreign markets in considering ". . . any rule, regulation or decision which may affect the access of any foreign supplier . . . to the United States market . . . . " U.S. agencies would be expressely authorized, in consultation with the USTR, to restrict access of any foreign supplier to the U.S. market in a service sector to the extent" appropriate to promote fairness in international service sector trade."

Congress, in developing a framework for regulation of foreign bank activities in the United States in the International Banking Act of 1978, expressely rejected a regulatory framework based on reciprocity in favor of one based on "national treatment"-- that is, treating foreign banks with respect to their United States operations substantially the same as U.S. banks. This decision was reached after testimony from Administration officials and representatives of the bank regulatory agencies highlighted the conceptual and practical problems resulting from adoption of reciprocity as the guiding principle of U.S. regulation of foreign bank activities.

The issue of reciprocity was not completely ignored in the International Banking Act, however. Section 9 of the Act directed the Treasury Department, together with the State Department and the federal bank regulatory agencies,to prepare a report detailing foreign treatment of U.S. banks. That report, which was submitted to Congress in September 1979, concluded that generally, U.S. banks receive equitable treatment abroad and that national treatment, rather than reciprocity was the proper foundation for regulating foreign banks in this country. The report specifically recommended continued "broad support" for the principle of national treatment as the "best foundation for further growth of international banking and efficient capital markets."

In light of the detailed consideration and explicit rejection of the reciprocity approach by Congress and those primarily responsible for U.S. bank regulatory policy, it would come as a great surprise to the foreign banking community if Congress now reversed itself on this fundamental issue. This is particularly true where the reversal would be accomplished through legislation directed at service industries in general, seemingly without a comprehensive review of the impact of such a reversal in policy on the U.S. and international banking systems.

The factors underlying Congress' 1978 rejection of reciprocity in banking regulation are just as relevant today. The complex nature of bank regulation, and its relation to important national policies, continue to make reciprocity particularly unsuited to regulation of the banking industry. Other witnesses presumably will cover the problems of shifting from equal national treatment to reciprocity as a basis for regulation of international trade in general. We will highlight and illustrate the particular problems associated with such a policy in the bank regulatory area.

Adopting a policy of reciprocity would require U.S. bank regulatory agencies to conduct detailed inquiries into the laws, regulations, and formal and informal policies of foreign nations to determine the degree of "access" afforded U.S. banks. As the 1979 Treasury report makes clear, even the task of ascertaining whether restrictions on access exist may prove extremely difficult.

Moreover, the diversity of regulation abroad will require administration by U.S. authorities of special and different rules applicable to banks from various countries. These rules for banks from particular countries will differ significantly from rules applied by U.S. regulations to domestic banks and to foreign banks from other countries. Recognizing these concerns, former Comptroller of the Currency John Heimann has called reciprocity a potential ". . . administrative nightmare, entailing enforcement of a different set of rules for banks from different countries." */

Bank regulation based on reciprocity ignores the fact that differences in bank regulatory policy often reflect differing financial and political systems. For example, many of the countries identified in the Treasury report as countries that exclude foreign banks are developing nations or have wholly nationalized banking systems. To expect such nations to provide the same degree of access to foreign banks as does the United States would be to ignore these fundamental differences and would result in imposing U.S. regulatory policies on countries with totally different financial and economic systems. Some countries are more restrictive than others for reasons having to do with the condition of their economy or their traditions which are not generally criticized and have no protectionist motives.

Congress should carefully consider the effects on the existing U.S. bank regulatory system before adopting a national reciprocity policy. Adoption of reciprocity as the guiding principle for U.S. regulation of foreign banks could result in a loss of control over the shape of American bank regulatory policy. If it is believed that reciprocity rather than national treatment should be the policy basis for U.S. regulation of foreign banks, reciprocity should be applied to liberalize as well as to restrict foreign bank activity. For example, many countries permit banks to engage in securities and other commercial activities, activities which are prohibited under existing U.S. policy. It would be inconsistent with a national policy of reciprocity to apply these and similar restrictions under U.S. law to foreign banks from countries which do not similarly restrict foreign banks. Reciprocity thus could result in U.S. bank regulatory policy reflecting the policies of other countries, rather than those of the United States.

Finally, and perhaps most importantly, regulating foreign bank access to the United States under a principle of reciprocity ignores the beneficial effects on the U.S. economy provided by foreign banks presence in this country. These benefits have included innovative services and increased competition, financial assistance to troubled U.S. financial institutions,

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* Remarks before the Consular Law Society, March 26,1980.

and increased recognition of United States' leadership role in the international financial system. Few would argue that these and other benefits are not sufficient to offset the negative factor of restricted access by U.S. banks to certain limited markets abroad.

These and other considerations have led Congress, Administration officials, and the U.S. bank regulatory agencies themselves, to uniformly reject reciprocity as the basis for regulating foreign banking in the United States. We urge Congress to reaffirm the United States' world leadership in applying national treatment principles and a long-standing commitment to freeing the flow of international capital.

We appreciate the opportunity to present our views on this important subject.

Respectfully submitted,

Dennis J. Bunyan
Chairman

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A Division of King Broadcasting Company

IRVIN P. STARR
Vice President and
General Manager

May 12, 1982

The Honorable Robert Dole
Chairman
Senate Finance Committee
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

KREM TV, Spokane, Washington, serves almost 500,000 households in Washington, Oregon, Idaho and Montana. As important however, is the fact that KREM TV also serves over 200,000 households in the Canadian province of Alberta.

Since 1976 Canada has denied businesses a tax deduction for the cost of advertising placed on U.S. television and radio stations and directed at Canadian audiences.

In addition, the practice exists in Calgary, Alberta of randomly deleting commercial messages broadcast on United States stations, and redistributed through Canadian cable systems.

The sale of advertising is the only means a broadcaster has to recover the cost of programming. The Canadian law has caused U.S. border stations to lose access to more than 20 million dollars in revenue annually. It is difficult to estimate the potential Canadian advertising revenues to our station since deletion has made it extremely difficult to sell such messages, and therefore a bench mark number of dollars has been impossible to establish. However, we believe a potential one million dollars in Canadian revenue could be generated for the Spokane television market, which would likely be divided between the three commercial stations on a competitive basis.

My station is very popular in Canadian cities such as Calgary and Edmonton, where it is carried by the local Canadian cable systems; yet the effect of the Canadian law has been to impose 100% tariff on my sale of advertising to Canadian customers. It is unfair that Canadian cable owners can profit from my station's broadcast signal while their government severely handicaps my station's ability to obtain reasonable compensation through Canadian advertising sales.

The Senate Finance Committee on International Trade scheduled a hearing on this issue on May 14. I am writing to request that this letter be made part of the hearing record and urge you to support an appropriate legislative response which would bring about repeal of the unreasonable Canadian law.

I will be happy to provide any additional information about this problem and the frustration we have faced for six years in trying to resolve it.

Sincerely yours,

Irwin P. Starr

IPS:ms

pc: Senator Henry M. Jackson
Senator Slade Gorton
Representative Thomas S. Foley
Senator James A. McClure
Senator Steve Symms
Senator John Melcher
Senator Max Baucus
Senator Mark O. Hatfield
Senator Bob Packwood

11 KTHI abc TV

May 19, 1982

The Honorable Robert Dole
chairman. Senate Finance Committee
United State Senate
Washington, D.C. 20510

Dear Senator Dole:

Recently legislation [illegible]2051) has been introduced to respond to an outrageous Canadian policy. Since 1976, Canada has denied its business a tax deduction for the cost of advertising placed with U.S. TV and radio stations and directed at Canadians. My station KTHI-TV, had received an important portion of our revenues from Canadian advertising.

The sale of advertising is the only means of broadcaster has to recover the cost of programming. The Canadian law has caused U.S. border stations to lose access to more than $20 million in revenue annually. I estimate that the Canadian restriction has cost my station $275,000. in potential Canadian advertising revenues. My station is very popular in Canadian cities such as Winnipeg and Saskatoon where it is carried by the local Canadian cable system; yet the effect of the Canadian law has been to impose a 100% tariff on my sale of advertising to Canadian customers. It is unfair that Canadian cable owners can profit from my station's broadcast signal while their government severely handicaps my station's ability to obtain reasonable compensation through Canadian advertising sales.

The Senate Finance Subcommittee on International Trade has scheduled a hearing on this issue on May 14. I am writing to request that this letter be made part of the hearing record and to urge you to support an appropriate legislative response which will bring about repeal of the unreasonable Canadian law.
I would be happy to provide any additional information about this problem and the frustration we have faced for six years in trying to resolve it.

Sincerely,

John P. Hrubesky
General Manager

cc: Senators: Mark Andrews, Dave Durenberger, Rudy Boschwitz, Quentin Burdick
Representatives: Arlan Stangeland, Byron Dorgan

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"Serving all of North Dakota and Western Minnesota"

WASHINGTON OFFICE
NATIONAL FOREIGN TRADE COUNCIL, INC.
1835 K STREET, N.W. • WASHINGTON, DC 20006 • (202) 887-0278

STATEMENT OF THE NATIONAL FOREIGN TRADE COUNCIL FOR HEARINGS OF THE SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE SENATE FINANCE COMMITTEE ON S. 2058

The National Foreign Trade Council is a private, non-profit organization comprised of over 650 companies engaged in all major fields of international trade and investment.

Service industries have quite appropriately begun to receive increased attention in Washington. Our nation's declining share of world trade calls attention to the need for improving the export competitiveness of American industries and the fastest growing payments account in the U.S. balance of payments is the export of services. Moreover, service exports often have a leveraged effect on the U.S. trade position since they can lead to more merchandise exports as when an American construction design project is followed by the purchase of American-made equipment and material.

The world market for services is growing faster than the market for manufactured goods. U.S. service industries, the most highly developed in the world, should be able to capture a larger share of this growing market.

However, while opportunities for service industries are expanding worldwide, discriminatory barriers increasingly deny fair access to foreign markets by U.S. suppliers. Our service industries are at a competitive disadvantage in many parts of the world as a result of foreign government intervention to protect their own service industries; such restrictions are in part responsible for the U.S. share of the world market for services actually decreasing in recent years.

These restrictions are proliferating due to such factors as: economic nationalism in the developed countries; emerging service sector restrictions in developing countries; world economic growth, causing some services like tourism and entertainment to become important international activities and hence potential candidates for protection or control; and the rapid emergence of new technologies which face barriers erected with almost equal speed.

National Foreign Trade Council, 10 Rockefeller Plaza, New York, NY 10020

As service activity grows worldwide, an increasing share of this activity will likely take place outside the GATT--further undermining that institution's credibility. It is necessary to begin now the effort to reduce barriers to services in order to keep the eventual job of bringing them under control from becoming unmanageable. Failure to devise meaningful international rules on services within the next decade could mean that liberal trade will have become quite clearly the exception rather than the norm.

The Council supports the enactment of S. 2058 (The Trade in Services Act of 1982) as an important step towards achieving equivalent treatment of trade in goods on the one hand, and trade and investment in services on the other. The bill (1) recognizes the importance of service industries to the United States economy, (2) aims to improve the competetiveness of U.S. services, (3) would promote cooperation between the United States Government and the private service sector as well as cooperation between the federal government and state governments, and (4) would seek to improve coordination within the U.S. government. We would like to address what we consider to be the key issues of the legislation.

S. 2058 would amend Section 102 of the Trade Act of 1974 to make reduction of foreign barriers and the development of internationally agreed rules for services "principal negotiating objectives of the United States." It would also clarify Section 301 of the Trade Act of 1974 as Amended, by explicitly and unambiguously including "suppliers of services".

These provisions should send a clear message to our trading partners that their treatment of U.S. services could become an important element of overall economic relations with the United States. Although Sections 102 and 301 cover trade in services at present, such a clear statement of priority is desirable in in light of the obstacles to negotiation and the uncertainty regarding the President's authority to retaliate in these areas.

The Congressional mandate for negotiations on trade in services will be an important political underpinning for Ambassador Brock's presentation on services at the November GATT Ministerial Meeting and will also help sustain the resolve of the administrative branch over many years of effort. This is essential in view of the formidable obstacles to a successful negotiation such as: the diversity of service industries; the relative openness of the U.S. market -- meaning that our ability to negotiate away service barrier for service barrier is limited; the competitiveness of U.S. service industries; and, the frequent use of service barriers to sustain not only economic but also political, military, or culturally-oriented policies.

Although our ultimate focus should be on multilateral and multisectoral solutions to the problem of international barriers to service industries, we must recognize that many of these problems may require more timely bilateral or sectoral approaches. It is important therefore that the negotiating mandate include these approaches. On the other hand we also recognize that the successes of the bilateral approach will be limited by certain realities of negotiating. For example, each issue will be isolated, and afford little opportunity for trade-offs; no common standards of behavior will shape the discussions, results may depend entirely on the U.S. will or ability to retaliate; and lack of personnel will severely limit the number of discussions. One of the first tasks of U.S. strategists will be to identify the best mix of these approaches and the forums most likely to achieve the best results.

With respect to the use of domestic legislation and Section 301 in particular, the NFTC believes that the utility of such authority is its use as a lever to bring down trade barriers rather than to create additional barriers. As a retaliatory measure 301 should be used as a last resort after multilateral or bilateral solutions are found wanting. In some areas of service activity not covered by the GATT many U.S. firms have achieved successful working relationships in foreign markets under arrangements which would be jeopardized by hasty or ill-considered unilateral action under 301. In most instances U.S. service industries would have far more to lose than to gain in a trade war over services. In any case use of Section 301 is no substitute for long-term action through multilateral negotiations.

Another central objective of S.2058 is the assignment of responsibility for coordination of U.S. policies concerning trade in services to the United States Trade Representative. The NFTC believes that the responsibility for a coherent trade policy must lie with the office of the U.S.T.R. We also believe that the authority of the President to take action in sectors governed by independent regulatory agencies could be clarified. However we do not favor an active trade policy role for these agencies. Independent regulatory bodies are not in a position to administer aspects of U.S. trade policy. Their active role, which can prove valuable, should be confined to advice and fact-finding in cases involving international trade disputes. The NFTC recommends that Section 6 of S.2058 be amended in this direction or that it be dropped entirely.

Finally, one of the reasons that the Tokyo round of multilateral negotiations was unable to take up the services issue in a concerted manner, was the lack of information about the nature of the service sector and the problems and barriers it faced. Future attempts to negotiate international guidelines must not be blocked for the same reason. We therefore strongly endorse the efforts of S.2058 and of Senator Inouye and Pressler in S.1233 to create a services industries development program which will develop a data base for policy decisions. There is particular need for analysis of the following areas: trade data; foreign trade barriers; U.S. state and federal laws and regulations; the employment effects of liberalization; export financing; tax treatment; anti-trust policies; and existing agreements, both bilateral and multilateral, which either affect U.S. service industries or might be adopted to cover services. Such information will be essential for developing a trade policy consensus on the key issues and on negotiating goals as well as for identifying possible areas of U.S. leverage in the negotiations.

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